1-1-1935

Congressional Opposition to Lincoln in the Early Years of the Civil War

Arnold O. Goplen

CONGRESSIONAL OPPOSITION
TO LINCOLN
IN THE EARLY YEARS OF THE CIVIL WAR

A Thesis Presented in Partial
Fulfillment of the Requirements
for the Degree of Master of Arts

by
Arnold O. Goplen

University of North Dakota
1935

This thesis, submitted by Arnold O. Goplen in partial fulfillment of the requirements for the Degree of Master of Arts, is hereby approved by the Committee of Instruction in charge of his work.

C. J. Kibby
Chairman

Roy E. Brown

A. V. Overn.

J. V. Breitwieser
Director of the Graduate Division

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INTRODUCTION

For an understanding of the Congressional opposition to Lincoln during the Civil War it is important to keep in mind a few of the conditions immediately preceding and following his election in 1860. Lincoln's problems were much augmented by the indecision of his predecessor, President Buchanan, who in his last message to Congress stated that the President of the United States had no power in South Carolina if she seceded from the Union. He also added that the Federal government cannot coerce the states, and that the only way to save the Constitution and the Union was by amending the Constitution to include the recognition of the right of property in slaves, the right of slavery extension into the United States territories, and the guaranteed enforcement of the fugitive slave laws.

Lincoln was nominated and elected on a platform which opposed the extension of slavery into the territories. In spite of Lincoln's public utterances to the effect that the South would not suffer at the hands of a Republican administration, should he be elected to the presidency, the news of his election was the signal for the secession of South Carolina, followed closely by six other southern states.

In the face of these circumstances Lincoln took a firm stand in his first Inaugural Address and maintained that the Union of these states is perpetual. He contended further that no state could lawfully leave the Union and that all ordinances of secession were null and void. He emphasized the fact that, in view of the Constitution and the law, the Union is unbroken and that he would enforce the Constitution and Federal law thruout the Union.[1]

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[1] Richardson, James D., Messages and Papers of the Presidents, Washington, D. C., 1897, VI, p. 7.

Lincoln's regard for the Union was reiterated in his special message to Congress July 4, 1861. He reaffirmed his stand on secession as being illegal and unconstitutional and as tending to destroy the Union and a republican form of government. The duty of employing the war power, he said, was forced upon him to save the Union.[2] When Lincoln delivered his first annual message December 3, 1861, he again emphasized his first stand by stating that the paramount issue in the war was the integrity of the Union. To preserve the Union all indispensable means would be employed; even the interests of slavery were subordinate to the Union.[3]

Lincoln's choice of the Union and not slavery as the dominant issue before the American people was a wise course to pursue. To have placed stress on the slavery issue at this time would have added to the anxiety which prevailed, especially in the South. The tone of the remarks was such as to allay fear and at the same time to indicate a firmness of purpose in fulfilling his oath of office to uphold the Constitution and the Union. Such a sound and conservative policy would enlist the support of the North and might draw a considerable support from all but the very radical sections of the South. On the other hand, stressing slavery as the big issue would have certainly been used by the South as an excuse to follow a very extreme course of action. It is true that in spite of not having this excuse furnished them, several of the southern states did secede but it was on their own motion and responsibility.

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2 Richardson, Messages and Papers, VI p. 31.

3 Ibid., VI, p. 54, 55.

When the southern states seceded they not only went contrary to Lincoln's established policy of preserving the Union and thus forced upon the country the issue of civil war, but in so doing they brought about the ultimate downfall of slavery. Secession was attempted on the theory that the state was sovereign and that the Union was merely a compact between sovereign states. Under this theory whenever a Federal law was contrary to the interest of a state, that state could disregard the law or, if necessary, withdraw from the Union. An attempt to carry out such a theory was frustrated during Jackson's administration when South Carolina sought to nullify the Federal tariff of 1832. The same issue but on a larger scale presented itself after the election of Lincoln, who was pledged to prevent the extension of slavery into the territories of the United States. That national policy was not in harmony with the wishes of many of the slave holders in the South and so resort was again had to their doctrine of states' rights. In contrast with the states' rights theory was the principle of Federal sovereignty, adhered to by leaders like Webster and Lincoln. According to that doctrine the Union was not made by the states, but by the people; consequently, the Union was perpetual; and a state could not of its own accord break away from the Union. In view of that interpretation, if the Union were threatened by any sectional or state interest, the latter would have to give way and yield to the supremacy of the Union. Thus the Union was paramount over property interests for without the Union, security of property would not exist. Lincoln's constant appeal for the Union must be kept in mind in order to understand his policies and the opposition they met during the Civil War.

CHAPTER I

FIRST OR SPECIAL SESSION OF 37th CONGRESS

In his special message to Congress July 4, 1861, Lincoln reviewed the course of events which had taken place from the opening of his term of office.[1] He pointed out that the functions of the Federal government had been suspended in six of the southern states, that government property had been seized including accumulations of public revenue, that government forts were being menaced by war-like preparations, and that officers of the Federal army and navy had resigned in great numbers and had taken up arms against the government. He made it plain that he considered the Confederacy an illegal organization; secession he described as sugar-coated rebellion, both unconstitutional and illegal. He reviewed the incidents surrounding the firing on Fort Sumter, and placed the definite responsibility for starting the war squarely on the shoulders of the South. In explanation of his suspension of the writ of habeas corpus his interpretation of the Constitutional provision on the subject was that such privilege may be suspended when, in cases of rebellion or invasion, the public safety does require it. As to whom this power of suspension was given the Constitution does not state, but he thought that it could not have been the intention of the framers of the Constitution that the danger should be permitted to run its course until Congress could be assembled.

In this emergency Lincoln evoked that war power of the Federal executive to enforce the Federal law and preserve the Union. The steps taken included

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[1] Richardson, Messages and Papers, VI, p. 31.

the call for 75,000 militia, the call for volunteers to serve for three years and large additions to the regular army and navy, the blockade of ports in the insurrectionary districts, and in certain cases the suspension of the writ of habeas corpus. Lincoln asked for 400,000 men and $400,000,000 as a preliminary measure. In this way he at first believed that the struggle could be speedily terminated.

Opposition to Lincoln's whole policy since March 4th appeared in the debate on the joint resolution (Senate Bill No. 1) to approve and confirm certain acts of the President for suppressing the rebellion. This resolution was introduced on July 6, 1861, by Senator Henry Wilson of Massachusetts. The resolution called for the approval of the following acts and proclamations: the proclamations of April 15th and May 3rd calling out 75,000 men and making increases in the army and navy, the proclamations of April 19th and April 27th instituting the blockade of ports in nine insurrectionary states, and the proclamations of April 27th and May 10th authorizing regional suspension of the writ of habeas corpus between Washington and Philadelphia and on the Florida coast. After listing these acts the resolution closed with the statement: "Be it resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, that all of the extraordinary acts, proclamations, and orders, hereinbefore mentioned, be, and the same hereby, are approved and declared to be in all respects legal and valid to the same intent, and with the same effect, as if they had been issued and done under the previous express authority and direction of the Congress of the United States.[2] This resolution was discussed at great

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[2] Cong Globe, 37th Cong., 1st Session, Washington, D. C., 1861, XXXI, p. 40.

length in the Senate but never came up for a vote.

John C. Breckenridge of Kentucky in his speech July 16, 1861, gave most of the main arguments against the approval of this resolution.[3] He stressed the unconstitutionality of the acts of the President. To enlist men for periods of three and five years was in derogation of the Constitution and law. The Constitution says that Congress shall raise armies and provide for the navies; a law on the statute books limits the number of officers and men. Referring to the blockade he said that it was an incident of war, and the Constitution declares that Congress shall pass an act to declare war. To suspend the writ of habeas corpus he considered as being classed among the legislative powers of the Constitution. Reference to Justice Story's opinion, in his commentaries on the Constitution, that the power belongs to the legislative and not the executive is given in support of his contention. Decisions of the Supreme Court also sustain this view, he said. Examples were not given in support of this, however.

He charged that the military authority had deprived citizens of liberty and property without due process of law. The searching of houses of private citizens without warrant, seizing of arms without judicial process, the imprisoning of individuals without legal warrant, and the suppressing of the freedom of the press were listed as evidences of subverting liberty.

Breckenridge suggested that action could have been withheld by the President until Congress assembled He contended that there was no necessity for the action taken, and to proceed under the assumption that the Constitution may be violated on the ground of necessity is to substitute the will of one

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[3] Cong. Globe, 37th Cong., 1st Session, XXXI, p. 138, 140.

man for a written constitution and to establish a government without limitation of powers. Further elaborating his argument, he added that it was never the contemplation of the framers of the Constitution that this government should be maintained by military force to subjugate the different political communities which composed the states. Breckenridge said: "An army of half a million men . . . is not employed in aid of the civil power . . . the civil power of the United States does not exist in the states which have withdrawn, but for the purpose of military subjugation. That, sir, is prosecuting the war unconstitutionally. Even if there was a warrant in the Constitution to carry it on in that way it would be the overthrow of the Constitution finally, and of the public liberty."[4]

Senator Anthony Kennedy of Maryland said that there was no need of suspending the writ of habeas corpus in the state of Maryland. He maintained that Maryland was entirely within the control of the civil authorities of the state, that the executive of the state was fully able at all times to suppress any insurrectionary movements, that the city government and the police of Baltimore resisted the mob and gave protection to the Massachusetts regiment passing through, and finally, that Maryland had shown its loyalty by a representation in Congress for the maintenance of the Union and the preservation of peace.[5]

Senator James A. Pearce of Maryland submitted a new angle of argument relative to the suspension of the writ of habeas corpus. He said that the suspension of the writ by executive authority is a violation of the principles of public freedom which had come to us from English law and practice.[6]

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4 Cong. Globe, 37th Cong., 1st session, XXXI, p. 140.

5 Ibid., XXXI, p. 42, 43.

6 Ibid , XXXI, p. 333.

In support of the argument that the suspension of the writ of habeas corpus was legislative power Pearce said that the Constitution did not provide the machinery by which the writ should be carried into operation; it left that to Congress, and Congress at its first session, he believed, passed the habeas corpus act by which jurisdiction on that subject was given to the courts of the United States.[7] Pearce was mistaken about the habeas corpus act because, after checking the United States Statutes at Large and the Annals of Congress for that period, I find no record of such an act at that time. The President's oath to support the Constitution did not imply that, because of it, the choice of means to suppress the insurrection rests solely upon his own discretion. To sanction such a doctrine would make the Constitution a thing of wax in his hands.[8]

Senator Trusten Polk of Missouri charged that the war was brought on by the President of his own motion. Secession was an accomplished fact before the close of the last Congress and yet the last Congress made no declaration of war. According to Polk the President could not call out the militia to enforce the law in states that had decided to withdraw from the Union. Such use of the militia would be contrary to the intention of the law of 1795 respecting the calling out of the militia, and would amount to coercion of the state.[9] By blockading the ports the President had violated the provision in the Constitution which provided that no preference should be given to the ports of one state over another state. Polk mentioned the action of the Missouri convention which met on February 28, 1861, and which drew up resolutions opposing the use of military force against the seceding states and warning Congress

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7 Cong. Globe, 37th Cong., 1st Session, XXXI, p. 333.

8 Ibid., XXXI, p. 334.

9 Ibid., XXXI, p. 48.

against the horrors of civil war.[10] Senator Lazarus W. Powell of Kentucky, in reply to the argument by Senator Baker of Oregon that war was necessary to save the Union, said that war would destroy the Union by reducing sovereign states to provinces; this would be contrary to the Constitution which says that the United States shall guarantee to every state a republican form of government. He said that he desired to see the Union re-united but that it must be done by compromise and conciliation. Accusation was brought against the Republican party for not supporting in the last session of Congress an amendment which would have effected compromise, and against the President for not including in his message to the special session any propositions for compromise, peace, and settlement.[11] Powell's charge against the Republican party referred to their refusal to accept the Crittenden compromise in the last session of Congress. This compromise was in the form of a joint resolution (Senate Bill No. 50) proposing certain amendments to the Constitution of the United States.[12] The first amendment prohibited slavery in the United States territory north of the line 36°30' and recognized slavery in territory south of the line. States admitted from either north or south of 36°30' might be admitted with or without slavery in accordance with provisions in the state constitution. The second amendment provided that Congress should have no power to abolish slavery in places under its exclusive jurisdiction if the places were situated within the limits of states that permitted the holding of slaves. The third amendment stated that Congress should have no power to abolish slavery in the District of Columbia as long

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10 Cong. Globe, 37th Cong., 1st Session, XXXI, p. 50.

11 Ibid., XXXI, p. 70.

12 Congressional Globe, Washington, D. C , 1861, 36th Congress, 2nd Session XXX, p. 114.

as slavery existed in the states of Virginia and Maryland. When slavery is abolished it must be with the consent of the inhabitants and with compensation. Federal officials were not to be prohibited from taking their slaves with them into the District. The fourth amendment prohibited Congress from hindering the transportation of slaves into states or territories where they were by law permitted. The fifth amendment made an addition to paragraph 3, section 2, article 4, of the Constitution; it would be the duty of Congress to pay the owner of the fugitive slave when the marshall was by force prevented from returning the fugitive. Congress had recourse by sueing the county where the intimidation took place. The sixth amendment made irrepealable the five preceding amendments, paragraph 3, section 2, article I, and paragraph 3, section 2, article IV of the Constitution. It also barred any amendment to the Constitution which would give Congress any power to interfere with slavery in any state where it was permitted. Following the amendments was a group of resolves: the fugitive slave laws were constitutional and the slave states were entitled to faithful execution of the laws, punishment should be imposed for interference with the execution of these laws; state laws in conflict with the fugitive slave laws of Congress were null and void; and, the laws prohibiting slave trade should be made effective.

Senator J. A. Bayard of Delaware blamed the President for adopting the policy of coercion rather than conciliation thereby causing the withdrawal of Virginia, Tennessee, North Carolina, and Arkansas.[13] Bayard insisted that if the Union could be saved by compromise good and well; but if saving the Union would mean the loss of liberty, it was best to abandon the Union.

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13 Cong. Globe, 37th Cong., 1st Session, XXXI, Appendix, 12-19.

The joint resolution for approving the President's acts did not come up for debate in the House of Representatives; but in a speech July 10, 1861, Clement L. Vallandigham of Ohio touched on many points in the joint resolution and, in addition, criticized Lincoln's Inaugural Address, his special session message, and his war policy.[14] The criticism voiced against Lincoln's special message was that it did not give a proper and complete treatment of the development of the slavery issue from an historical point of view, nor the attitude of the President and his party toward slavery, nor the fact that compromise had been blocked by the Republicans in Congress. The Inaugural Address was criticized on the ground that one could not detect whether it meant peace or war. Vallandigham held that the war policy was necessary to the Republican party. The Morrill tariff, he said, with its high rates had diverted the trade to the South and West because the Confederate tariff was much lower. To protect themselves against loss of wealth and political power New England and Pennsylvania demanded coercion and civil war. The various acts of the President pertaining to the war were described as usurpations in violation of the Constitution. On July 15, 1861, Vallandigham offered a set of resolutions censuring the President; these were laid upon the table.

A little later in this session the question of approving the acts of the President came up in the form of an amendment to the bill (Senate Bill No. 69) to increase the pay of non-commissioned officers ... in the service of the United States. This amendment, like the joint resolution previously

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14 Cong. Globe, 37th Cong., 1st Session, XXXI, p. 57, 60.

discussed, was introduced by Senator Henry Wilson of Massachusetts on August 5, 1861. The amendment read: "And be it further enacted, that all the acts, proclamations, and orders of the President of the United States, after the fourth of March, 1861, respecting the army and navy of the United States, and calling out or relating to the militia or volunteers from the states, are hereby approved, and in all respects legalized and made valid to the same intent, and with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States."[15] There was no discussion in either house on the above amendment but a vote was taken on the whole bill in the Senate where it carried by a vote of 33 for and 5 against. In the House of Representatives a vote was taken on striking out the amendment; this failed by a vote of 19 for and 74 against.[16] In this vote there were 11 Democrats, 3 Unionists, 2 Republicans, 1 Union Democrat, 1 Union Whig, and 1 Conservative. The majority of the delegation from the states of Maryland and Oregon voted in opposition.

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15 Cong. Globe, 37th Cong., 1st Session, XXXI, p. 442.

16 Ibid., XXXI, p. 449. A record of the votes is listed in the appendix, p. 73.

OPPOSITION VOTE ON BILL (Senate Bill No. 69)

INCLUDING AMENDMENT TO RATIFY ACTS OF THE PRESIDENT

SENATE VOTE[17]

Senator	State	Party Affiliation
Breckenridge, John C.	Kentucky	Democrat
Kennedy, Anthony	Maryland	Unionist
Polk, Trusten	Missouri	Democrat
Powell, Lazarus W.	Kentucky	Democrat
Saulsbury, Willard	Delaware	Democrat

The opposition senators in this vote who spoke against Lincoln on the joint resolutions (Senate Bill No. 1) were: Breckenridge, Kennedy, Polk, and Powell. In this vote there were 4 Democrats and 1 Unionist.

The introduction of the confiscation bill (Senate Bill No. 25) by Senator Lyman Trumbull of Illinois on July 15, 1861, led to a discussion of the subject of confiscating property including slaves employed in military service against the United States.[18] Senator James A. Pearce of Maryland gave the main opposition argument in the Senate. He objected primarily to the amendment to the bill submitted by Senator Trumbull July 22, 1861, which provided that persons employing slaves in aiding the rebellion should forfeit all right to such service or labor. He stated that it was an act of emancipation, however limited and qualified In the states where slavery

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17 Cong. Globe, 37th Cong., 1st Session, XXXI, p. 442.

18 Ibid., XXXI, p. 219.

existed, even if they should return to the Union, the law would be considered unconstitutional. He expressed the view that such a law could not be enforced in the states where blacks alone were employed. In addition to the above objections he felt that such a law was unwise and would lead to irritation between the slave-holding states and the free states.[19]

In the House of Representatives John J. Crittenden of Kentucky gave the main arguments which were presented against the bill.[20] He pointed out that Congress had no power to legislate on the subject of slavery in the states, and that the power was not given to Congress even if the country was at war and even if the power was used for the preservation of the Union. He said that the bill was unconstitutional, in another respect, because it would work forfeiture beyond the life of the individual. He maintained that our laws governing treason were sufficient without further legislation. To pass such an act, he believed, would cause us to be charged with waging an anti-slavery war.

Representative George H. Pendleton of Ohio would not favor a bill that permitted any citizen to seize property from any neighbor, on mere suspicion, with no good reason or ground, and carry it off to the district attorney in order that he might commence proceedings of condemnation. By way of amendment he suggested that when property is seized in a loyal state it should be in the ordinary mode--by warrant supported by an affidavit of probable cause; and, in insurrectionary districts, seizures should be made only by persons authorized by the President by warrant under his hand.[21]

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19 Cong. Globe, 37th Cong., 1st Session, XXXI, p. 219.

20 Ibid., XXXI, p. 411, 412.

21 Ibid., XXXI, p. 413.

That the measure would not aid the army, that it would increase the bitterness of war, and that it was not in conformity with the principles of civilized and humanized warfare was expressed by Representative Alexander S. Diven of New York.[22]

The vote recorded in the Senate was only on the amendment which provided the forfeiting of slave labor engaged in aiding the rebellion. The vote July 22, 1861, stood 33 for and 6 against. In the House August 3, 1861, the vote was on the whole bill and resulted in 60 for and 48 against.[23] In this vote the majority of the delegation from the states of Kentucky, Indiana, Maryland, and Oregon voted in opposition to the measure. In this vote there were 25 Democrats, 9 Republicans, 7 Unionists, 2 Union Democrats, 2 Union Whigs, 1 Union Republican, 1 Whig, and 1 Conservative. This bill was approved by President Lincoln August 6, 1861.

VOTES ON CONFISCATION BILL (Senate Bill No. 25)

SENATE VOTE

Senator	State	Party Affiliation
Breckenridge, John C.	Kentucky	Democrat
Johnson, Waldo Porter	Missouri	Democrat
Kennedy, Anthony	Maryland	Unionist
Pearce, James A.	Maryland	Democrat
Polk, Trusten	Missouri	Democrat
Powell, Lazarus W.	Kentucky	Democrat

Senators Breckenridge, Kennedy, Polk, and Powell voted against the

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22 Cong Globe, 37th Cong., 1st Session, XXXI, p. 414.

23 Ibid., XXXI, p. 431. The record of this vote is listed in the appendix, p. 73, 74.

24 Ibid., XXXI, p. 455.

25 Ibid., XXXI, p. 219.

Senate Bill (No. 69) and also spoke against Lincoln in the Senate Bill (No. 1). In this vote there were 5 Democrats and 1 Unionist.

In the preceding measures the senators who persisted in the opposition were: Breckenridge, Kennedy, Polk and Powell. Kennedy was a Unionist and the others were Democrats. They represented the states of Kentucky, Maryland, and Missouri.

In the House vote on the Senate Bill (No. 69) the majority of the delegation from two states voted in opposition: Maryland and Oregon. In the case of Oregon there was only one representative from the state in Congress. In the vote on the confiscation bill (Senate Bill No. 25) the majority of the delegation from the states of Kentucky, Indiana, Maryland, and Oregon voted in opposition. Only two states, Maryland and Oregon, sent delegations, the majority of which persisted in opposition in both of the above votes.

In summing up the arguments used in this session in opposition to Lincoln's policies, the main argument was that the acts of the President were unconstitutional usurpations of power. It was pointed out that the power to raise armies and maintain navies belonged to Congress. To blockade ports was an act of war, and the power to declare war rested with Congress. Furthermore, the blockading of ports was contrary to the provision in the Constitution by which no preference shall be given to ports of one state over the ports of another state. The military authority in depriving citizens of liberty and property was contrary to the <u>due process of law</u> provided for in the Constitution. The use of military force to coerce states that have decided to withdraw from the Union was contrary to the intentions of the framers of the Constitution. The suspension of the writ of habeas corpus was legislative power and was not within the authority

of the executive.

A further argument used against the President's policies was that there was no necessity for his action. He could have waited until Congress had assembled. The suspension of the writ of habeas corpus was unnecessary in Maryland because the state was under the control of civil authority, the state executive and the Baltimore police were cooperating with the government in putting down mob action, and Maryland had a loyal Union representation in Congress.

Lincoln's opponents held that the war was brought on by the President and his party. They argued that Congress had not declared war, that the President and the Republicans had refused all compromises and that the President by his policy of coercion had brought about the secession of Virginia, Tennessee, North Carolina, and Arkansas. Lincoln's special message of July 4, 1861, was criticized for not giving a complete picture of the slavery question and his Inaugural Address for not giving a clear statement whether it meant peace or war. The war, it was argued, was occasioned by political necessity. The opposition held that the war would result in the destruction of the Union because it would reduce the states to provinces contrary to the provision in the Constitution which guarantees to every state a republican form of government.

Lincoln in referring to the calling out of troops and the blockading of ports had said, "So far all was believed to be strictly legal."[26] With reference to the call for volunteers and additions to the army and navy

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26 Richardson, Messages and Papers, VI, p. 24.

he had said, "These measures, whether strictly legal or not, were ventured upon under what appeared to be a popular demand and a public necessity trusting then, as now, that Congress would readily ratify them. It is believed that nothing has been done beyond the constitutional competency of Congress."[27] Lincoln believed that the writ of habeas corpus could be suspended when in cases of rebellion or invasion the public safety does require it. As to who could suspend the writ, he pointed out that the Constitution did not state, but that it could not have been the intention of the framers of the Constitution that a perilous situation should be permitted to run its course until Congress assembled.[28] As to the necessity of the war Lincoln said, "It was with the deepest regret that the Executive found the duty of employing the war power in defense of the government had been forced upon him. He could but perform his duty or surrender the existence of the government."[29] He contended that if a state could lawfully withdraw from the Union it could also discard the republican form of government, so that to prevent its withdrawal was indispensable in order to guarantee a republican form of government. Lincoln in his Inaugural Address stated clearly that secession was illegal, that ordinances of secession were null and void, and that the Union was unbroken. Taking the view that the Union was still intact, it was his duty to enforce the Federal law throughout the Union. His statement in the Inaugural Address is very clear with reference to his policy---- whether it meant peace or war. He said, "In your hands, my dissatisfied

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27 Richardson, Messages and Papers VI, p. 24.

28 Ibid., VI, p. 25.

29 Ibid., VI, p. 31.

fellow-countrymen, and not in mine, is the momentous issue of civil war. The government will not assail you. You can have no conflict without being yourselves the agressors."[30]

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30 Richardson, Messages and Papers, VI, p. 11

CHAPTER II

SECOND SESSION OF 37th CONGRESS

During this session of Congress several measures came up bearing on the question of slavery and which suggested the warnings that had been given earlier by Lincoln. In the first Inaugural Address he had stated that slavery was safe where it was, but he qualified it by suggesting that secession might endanger slavery.[31] In his first annual message he stated that the interests of slavery were subordinate to the Union.[32] Lincoln's first step in the direction of securing legislation on the slavery question was a recommendation that Congress pass a joint resolution stating that the United States government ought to cooperate by giving pecuniary aid to any state that would adopt steps toward the gradual abolishment of slavery.[33] On July 14, 1862, he sent to Congress the draft of a bill embodying plans for compensated emancipation.[34]

A joint resolution (H. R. No. 48), in accordance with the recommendation of the President, was introduced by Representative Roscoe Conkling of New York on March 10, 1862.[35] The main argument against this resolution, in the Senate, was made by Lazarus W. Powell of Kentucky. With reference to the joint resolution he said: "I regard the whole thing, so far as the slave states are concerned, as a pill of arsenic, sugar coated."[36] Powell said

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31 Richardson, Messages and Papers, Washington, D. C., 1897, VI, p. 5.

32 Ibid., VI, p. 54.

33 Ibid., VI, p. 68.

34 Ibid., VI, p. 84.

35 Cong. Globe, 37th Cong., 2nd Session, Washington, D. C., 1862 XXXII, p. 1148.

36 Ibid., XXXII, p. 1374.

that no practical good could result from the resolution because it did not propose anything specific but merely stated what Congress ought to do without saying that it would do it. He said that the object of the resolution was to inaugurate abolition parties in the border slave states. To stir up agitation in the border slave states, he thought, would be injurious to property and would create a feeling of uneasiness. According to Powell, the President's pledge announced in his first Inaugural Address was violated by this resolution because it was an interference with slavery in the states. He called the resolution a clear annunciation by the President that, in order to preserve the Union, slavery must be abolished in the states. Powell questioned the constitutionality of the step. "I don't think we have the constitutional power," he said, "to devote the money of the public in that way, any more than we should have to devote it to pay the state of Illinois for her horses or cattle."[37]

Senator Willard Saulsbury of Delaware, in addition to several of the foregoing arguments, said that the resolution ignored the pledge of the party in power.[38] He considered it an interference with the institutions of the states. He read a set of resolutions, passed by the Delaware legislature, to the effect that the state had not asked any help toward emancipating her slaves and expected, when she saw fit to do so, to carry it out in her own way and not to have it engineered from Washington. Saulsbury feared that the resolution was meant for political campaign purposes, a kind of promise never to be kept. By adopting measures of this kind the constitutional rights of the states would be attacked, the attachment to the Union would be weakened,

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37 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 1374.

38 Ibid., XXXII, p. 1332.

and the war would be prolonged.[39]

In the House of Representatives John J. Crittenden of Kentucky gave the main arguments against the joint resolution. He said that it was bad faith to ask the states who had pledged their support to the Union to give up their domestic institutions.[40] The argument that the measure would help break the rebellion and prevent the union of the states with an independent southern government was too remote a possibility to base any argument upon. Such a measure would not lead to a policy of conciliation, but would renew the slavery agitation. In rebuttal to Representative Olin's remarks that he favored any means to preserve constitutional supremacy, including servile war, Crittenden said: "A doctrine more at war with every principle of ethics, morals, and religion cannot be proclaimed."[41] William A. Richardson of Illinois said that he did not think that we were prepared to enter upon a program of purchasing and freeing slaves. He said: "I have long entertained the idea that this class of negroes in our country are incapable of becoming the repository of freedom or government.[42] Daniel W. Voorhees of Indiana declared that he was opposed to the taxation of the free states for the purpose of emancipating slaves.[43] Charles J. Biddle of Pennsylvania estimated that the cost of freeing the negroes in Delaware, alone, would be nearly $1,000,000; he said that the tax burden would be too great to carry out such a scheme. Biddle took the view that the burden of slavery rests upon the people where it exists and that state action on the subject had always been beneficial while Federal action he considered pernicious and unconstitutional.

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39 Cong. Globe., 37th Cong., 2nd Session, XXXII, p. 1333.

40 Ibid., XXXII, p. 1172.

41 Ibid., XXXII, p. 1173.

42 Ibid., XXXII, p. 1149.

43 Ibid., XXXII, p. 1150.

Representative William Allen of Ohio sought to explain the action of the President, in proposing this joint resolution, as a political maneuver to satisfy the ultra portion of the Republican party. He ventured the opinion that many of the Republican leaders did not wish to see the Union exist as it was, but desired that slavery either be abolished in all the states or that a northern confederacy of free states be established in which they might rule supreme. The motive for this resolution, according to Allen, was to inaugurate a policy looking to the ultimate separation of the Gulf states from the confederacy and to enlarge the area of a northern confederacy of free states.[44]

The Senate voted on the joint resolution on April 2, 1862, and it carried by a vote of 32 to 10.[45] The resolution passed the House March 11, 1862, 89 to 31.[46] In this vote the majority of the delegation from Maryland and Oregon voted in opposition. There were 22 Democrats, 5 Unionists, 2 Republicans, 1 Union Republican, and 1 Union Whig in this opposition vote. The representatives who were absent when this vote was taken were: Wall, Wright, Smith, Cooper, and Vallandigham.

The draft of the bill for compensated emancipation which was included in a message by the President to Congress on July 14, 1862, was read by the secretary in the Senate on the same day. Senator Grimes made a motion that the bill be laid on the table and printed. Following this a motion was made to refer the bill to the committee on finance; this motion carried, but it was not taken by yeas and nays.[47] There was no further discussion of this matter during this session. While the question on referring the bill to the Committee was before the Senate, Senators Grimes and Powell said that they did not recognize

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45 Cong. Globe, 37th Cong., 2nd Session XXXII, p. 1496.

46 Ibid., XXXII, p. 1179, The record of this vote is listed in appendix, p. 75.

47 Ibid., XXXII, p. 3322, 3324.

the right of the President to send a bill to Congress.

VOTES ON JOINT RESOLUTION (H. R. No. 48)

SENATE VOTE

Senator	State	Party Affiliation
Bayard, James A.	Delaware	Democrat
Carlile, John S.	Virginia	Unionist
Kennedy, Anthony	Maryland	Unionist
Latham, Milton S.	California	Democrat
Nesmith, James W.	Oregon	Democrat
Powell, Lazarus W.	Kentucky	Democrat
Saulsbury, Willard	Delaware	Democrat
Stark, Benjamin	Oregon	Democrat
Wilson, Robert	Missouri	Unionist
Wright, Joseph A.	Indiana	Democrat

There were 7 Democrats and 3 Unionists in the above vote.

The subject of confiscation was debated at great length during the second session of the 37th Congress. Although a great number of confiscation bills were introduced, only one was finally passed and enacted into law. The confiscation bill which was enacted was introduced by Representative Eliot of Massachusetts on April 30, 1862. It was the bill (H. R No. 471) to confiscate the property of rebels for the payment of the expenses of the present rebellion and for other purposes.[48] The bill was brought to the Senate from the House on May 27th and was referred back to the House with an amendment.[49] It was then submitted to a committee of conference of the two Houses with the result that the disagreement was settled and the report was accepted.[50]

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48 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 1886.

49 Ibid., XXXII, p. 2364.

50 Ibid., XXXII, p. 3178, 3266.

The confiscation measure in its final form was called an act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes. The act included fourteen sections. The first four sections dealt with the punishment of treason and rebellion, sections 5 to 8 were on confiscation, sections 9 to 12 were concerned with emancipation of slaves, section 13 dealt with pardon, and, section 14 gave power to the courts to carry out the provisions of the act.[51]

In conjunction with this confiscation act an explanatory joint resolution (H. R No. 110) was passed, the important feature of which was the amendment submitted by Senator Clark of New Hampshire. The amendment read: "Nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."[52] In the debate on the confiscation bill Senator Willard Saulsbury of Delaware presented arguments on the status of the southern states that were in revolt against the government. He disagreed with the President in terming the action of the seceding states insurrection. Saulsbury said that we were in the midst of a great political revolution and that the government of the Southern states was to be regarded as de facto; and the Southerners therefore, could not be punished for treason because they had transferred their allegiance to the de facto government. He said: "The doctrine of the right of revolution leads unerringly to this result--that where a revolution is begun under circumstances which show clear probability of success, they who support that government commit thereby no felony, and cannot justly be subjected to the punishment of death, imprisonment, or the confiscation of their property."[53] Saulsbury

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51 Cong. Globe, 37th Cong., 2nd Session, XXXII, Appendix, p. 412.

52 Ibid., XXXII, p. 3374.

53 Ibid., XXXII, p. 2899, 2900.

quoted a passage from a speech made by Lincoln in the House of Representatives in 1848 in which he recognized the right of revolution even for a portion of a people under one government.[54] Because the Federal government could not afford protection against the consequences of disobedience to state authority, he held that they were excused from obedience or from suffering any penalty. Saulsbury denied that the Constitution gave the government the right to prevent the secession of a state by the force of arms. "This right", he said, "if it exists, springs from the overruling necessity of self-preservation and the right which one party to a contract, while fulfilling his own obligations under it, has to compel a compliance by the other party to it with his obligations."[55] The present struggle, being a civil war, would subject the parties to the rules of modern civilized warfare, and that according to the modern rule of war private property was to be respected. Therefore, this bill was contrary to civilized practice in war.[56] The provisions in the bill for punishing treason Saulsbury regarded as unconstitutional because due process of law and trial by jury were ignored. He said that in our past wars the question of confiscation had not come up and that it was brought in now because of a design to make this a war for the abolition of slavery. The adoption of this measure, he said, would prolong the war and make separation final.

Senator Edgar Cowan of Pennsylvania believed that it would be difficult to confiscate rebel property and distinguish between the guilty and the loyal people. In order to distinguish between the two classes it would be necessary to have a trial in person; this bill provided only for proceedings against

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54 Cong., Globe, 37th Cong., 2nd Session, XXXII, p. 2899.

55 Ibid., XXXII, p. 2901.

56 Ibid., XXXII, p. 2902.

property as distinct from persons.[57] Cowan held that the rebellion was the work of a few hot-headed men, and that the spread of the rebellion was due to the neglect of President Buchanan.[58] He thought that very little of the proceeds from the confiscated property would find its way into the treasury, but that there would be a great deal of plundering by camp followers. Another problem would be the keeping of the property, especially perishable types, until it could be condemned.[59] Cowan was afraid that this confiscation bill would alienate the border states and encourage those in rebellion. He said that the legislation of Congress should be confined to laws essential to the raising and supporting of armies.[60]

Senator O. H. Browning of Illinois held that confiscation of property for the crime of the owner cannot be effected by proceedings against property as distinct from persons, but must follow personal conviction of the offender. In support of this argument he quoted opinion from Judge Sprague: "Confiscations of property, not for any use that has been made of it, which go not against an offending thing, but are inflicted for the personal delinquency of the owner, are punitive; and punishment should be inflicted only upon due conviction of personal guilt."[61]

Senator John S. Carlile of Virginia argued that Congress could not take property in the manner outlined in the confiscation measure. It would be contrary to the constitutional provisions for trial by jury and due process of law. It also violated the provision which states that no attainder shall work corruption of blood.[62] Carlile said that the bill was impractical because such a law could not be enforced until the rebellion was supressed. To make this a

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57 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 2960.

58 Ibid., XXXII, p. 2962.

59 Ibid., XXXII, p. 2963.

60 Ibid., XXXII, p. 2993.

61 Ibid., XXXII, p. 2921

62 Ibid., XXXII, p. 1159.

war against slavery would be to go contrary to the pledges of the administration.[63] Constitutionally, he said, Congress could not interfere with slavery.

Senator Garret Davis of Kentucky denied that slavery was a cause of the war. He said, "If the free states would just let slavery alone in the slave states and not meddle with it, it would not harm them.[64]

Senator John B. Henderson of Missouri argued that if we regarded the South as belligerents, confiscation was contrary to the principles of international law.[65]

Senator J. A. McDougall of California believed that clemency should be followed in this war as in war between states. He gave a quotation from Vattel in support of this doctrine: "For the same reasons which render the observance of those maxims a matter of obligation between State and State, it becomes equally and even more necessary in the unhappy circumstance of two incensed parties lacerating their common country."[66] McDougall described the scheme for colonizing the negroes as visionary and impractical. He thought the cost would be too great, and he doubted the constitutionality of setting up a government for another people outside of our own republic.[67]

Senator L. W. Powell of Kentucky said that the emancipation feature of the bill violated the laws and constitutions of the states, many of which had laws regulating emancipation.[68] According to Powell the President of the United States did not have power to declare martial law. If he exercised that power, he would be clothed with legislative, judicial, and executive powers; Congress alone can exercise implied powers. He referred to the acts of the President as usurpations of power.[69]

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64 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 1902.

65 Ibid., XXXII, p. 1572.

66 Ibid., XXXII, Appendix, p. 62.

67 Ibid., XXXII, p. 67.

68 Ibid., XXXII, p. 107.

69 Ibid., XXXII, p. 109.

In the House of Representatives the confiscation bill occasioned extended debate. Representative W. S. Holman of Indiana said that the Constitution was designed for every emergency, that it was the same in peace as in war, and that its provisions were ample for the punishment of crime.[70] Holman argued that slaves could not be liberated unless the states were regarded as being out of the Union. Emancipation, he said, in order to accomplish anything would lead to servile insurrection which would result in a war of extermination involving old people, children, and defenseless women. He asked if the North would be prepared to open its doors to the millions of unfortunates driven from the South.[71] Holman said that the policies advocated would strike both guilty and loyal people and would destroy the basis for the restoration of the Union. The adoption of this measure would also have the effect of changing the object of the war. He felt that this was no time for experiments and for divisions of opinion on new issues of policy.

Representative Robert Mallory of Kentucky said that the bill was unconstitutional because it acted as an attainder beyond the life of the guilty individual and because it sought to take property without due process of law.[72] He said that the intention of the confiscation bill was not to secure revenue or to punish the rebellion but to get rid of slavery. He declared that this was contrary to the pledges of the administration not to interfere with slavery in the states where it existed. He denied that slavery, itself, was the cause of the war but that it was the use made of it.[73] He believed that slavery was the best condition for the African race and that the great principles of political liberty in the Constitution and slavery had coexisted ever since the adoption

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70 Cong. Globe, 37th Cong., 2nd Session, XXXII, Appendix, p. 151.

71 Ibid., XXXII, p. 152.

72 Ibid., XXXII, p. 153, 154.

73 Ibid., XXXII, Appendix, p. 155.

of the Constitution and could continue to coexist forever. Mallory wondered what would be done with the negroes freed by this bill. He said that most of the states would exclude them and that a colonization scheme would be too burdensome, since it would involve a debt of $1,200,000,000.[74]

Representative Henry Grider of Kentucky said that the war was caused by sectional jealousies and a failure to follow the advice of Washington in his Farewell Address.[75] Grider held that this measure would create uneasiness among Union supporters and would also give support to the argument used by the South that they took up arms because their slaves were threatened.[76] Another argument used by Grider was that confiscation was contrary to the spirit of the age, the spirit of forgiveness being one of the highest moral sentiments in men and nations.[77] Grider said that emancipation could not be accomplished in Kentucky by the exercise of Federal power because it was a local matter and the Constitution of Kentucky was paramount on that subject.

Representative Aaron Harding of Kentucky said that it was unconstitutional to confiscate a man's property and punish him for treason without a trial.[78] He said that the effect of interfering with slavery would be to bring about a more united South.[79]

Representative B. F. Thomas of Massachusetts made the statement that the confiscation of property was contrary to the law of nations. In support of this he cited a statement by Wheaton in his Elements of International Law: "But by the modern usage of nations . . private property on land is also exempt from confiscation . . . this exemption extends even to the case of an absolute and unqualified conquest of the enemy's country."[80] Thomas pointed

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74 Cong. Globe, 37th Cong , 2nd Session, XXXII, p. 156.

75 Ibid., XXXII, p. 162.

76 Ibid., XXXII, p. 164.

77 Ibid., XXXII, Appendix, p. 165.

78 Ibid., XXXII, p. 187.

79 Ibid., XXXII, p. 188.

80 Ibid., XXXII, p. 219

out that the rebels could not be regarded as belligerents and traitors at the same time, and if regarded as belligerent they were entitled to the protection accorded by the rules of war and if regarded as traitors they still had the protection afforded by the Constitution.[81] As a revenue measure it was worthless. Thomas said, "You might as well pasture your cattle on the desert of the Sahara."[82] Another argument used by Thomas was that the bill was retroactive and to many people would function as an ex post facto law. A further argument against the bill was that it was harsh because it confiscated all property and made no exemptions.[83]

Representative C. A. Wickliffe, in support of the argument that the seizing of private property on land was forbidden by the rules of civilized war, cited a statement by John Quincy Adams when demanding the fulfillment of the treaty of Ghent: "Public property, by the usages of war, is liable to be taken and removed; but as to private property and slaves, they ought never to be taken... Slaves were private property. The act of seducing them from their masters by a promise of freedom was in violation of the laws of war."[84] Wickliffe said that he feared the arming of the negroes would lead to a servile insurrection.[85]

Representative J. W. Menzies of Kentucky regarded the measure inexpedient because it would prolong the war and cause owners of property to unite in desperate activity to protect it.[86]

Representative William Allen of Ohio said that the subjects of emancipation and confiscation were so separate and distinct that it was useless to consider them in the same bill. He believed they were incorporated in the same measure to force those who favored confiscation to vote for abolition of slavery also.[87]

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81 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 220.

82 Ibid , XXXII, Appendix, p. 220.

83 Ibid., XXXII, p. 221.

84 Ibid., XXXII, p. 262.

85 Ibid., XXXII, p. 264.

86 Ibid., XXXII, p. 147.

87 Ibid., XXXII, Appendix, p.120.

He said that confiscation in order to be effective would have to include property of loyal persons because such property was just as much a resource of the rebel government.[88] As far as emancipation was concerned it could not be accelerated by Congressional enactments; emancipation was taking place, Allen said, wherever the army advanced.[89]

The explanatory resolution (H. R No. 110) produced heated debate in the Senate. The opposition came from a group of senators who in the previous votes had been with the administration. The resolution involved the interpretation of the confiscation act in such a way as to remove the objections to the bill by President Lincoln.

Senator Preston King of New York said that the President had the constitutional right to veto bills but that it would not do for a senator to suggest the modification of a bill. He said, "It is monstrous to commence a practice that would require the two houses to ascertain and shape their action by the will of the executive."[90] King regarded the confiscation of an estate during the life-time of the guilty individual to be absurd in a bill which provided for the hanging of the guilty party. He said: "The time has come in my judgment when the Senate and Congress and the people of the country must come up to their work and assume their responsibilities to save the country from its enemies, and to save it from timid counsels and half-way measures."[91]

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88 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 122.

89 Ibid., XXXII, p. 123.

90 Ibid., p. 3374.

91 Ibid., p. 3375.

Senator Henry S. Lane of Indiana objected to legislating under duress or under threat of veto from the President. He said that he would not surrender the independence of the Senate for any president.[92]

Senator Lyman Trumbull of Illinois said that a life estate in the lands of the West would amount to nothing.[93] He said that he did not believe that it was the intention of the framers of the Constitution to have the President exercise influence over votes on pending bills.[94] In this case, he said, the vote was taken for no other purpose than to meet the views of the executive.[95]

Senator Benjamin F. Wade of Ohio said that there was only one constitutional way of getting the President's view on a bill sent for his consideration and called this method "creeping in the back door" with vetoes.[96]

The confiscation bill (H. R. No. 471) passed the House of Representatives on July 11, 1862, by a vote of 82 to 42.[97] The absentees in this vote were Delano, Johnson, Robinson, Sheffield, and Chamberlain. In the opposition vote there were 26 Democrats, 8 Unionists, 2 Union Democrats, 1 Republican, 1 Union Republican, 1 Whig, 1 Union Whig, 1 Conservative Unionist, and 1 Conservative. The majority of the delegation from Maryland and Oregon voted in opposition. The Senate voted on the bill July 12, 1862, and it carried by a vote of 27 to 12.[98] The explanatory resolution (H. R. No. 110)

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92 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 3374.

93 Ibid., XXXII, p. 3374.

94 Ibid., XXXII, p. 3379.

95 Ibid., XXXII, p. 3380.

96 Ibid., XXXII, p. 3375.

97 Ibid., XXXII, p. 3267. For record of vote see appendix, p. 75, 76.

98 Ibid., XXXII, p. 3276.

passed the House by a vote of 83 to 21, but in this vote there were 55 who did not answer the roll.[99] The Senate vote was 25 to 15.[100]

VOTES ON CONFISCATION BILL (H. R. No. 471)

SENATE

Senator	State	Party Affiliation
Bayard, James A.	Delaware	Democrat
Browning, Orville H.	Illinois	Republican
Carlile, John S.	Virginia	Unionist
Cowan, Edgar	Pennsylvania	Republican
Davis, Garrett	Kentucky	Old-line Whig
Henderson, John B.	Missouri	Democrat
Kennedy, Anthony	Maryland	Unionist
McDougall, James A.	California	Democrat
Powell, Lazarus W.	Kentucky	Democrat
Saulsbury, Willard	Delaware	Democrat
Willey, Waitman T.	Virginia	Unionist
Wilson, Robert	Missouri	Unionist

The Senators who voted against compensated emancipation and also voted against the confiscation bill were Bayard, Carlile, Kennedy, Powell, Saulsbury, and Wilson. In this vote there were 5 Democrats, 4 Unionists, 2 Republicans, and 1 Old-line Whig.

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99 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 3375.

100 Ibid., XXXII, p. 3383.

VOTES ON EXPLANATORY RESOLUTION(H. R. 110)

SENATE

Senator	State	Party Affiliation
Carlile John S.	Virginia	Unionist
Davis, Garret	Kentucky	Old-line Whig
Grimes, James W.	Iowa	Republican
Harlan, James	Iowa	Whig (later Republican)
Kennedy, Anthony	Maryland	Unionist
King, Preston	New York	Republican
Lane, James Henry	Indiana	Republican
Powell, Lazarus W.	Kentucky	Democrat
Saulsbury, Willard	Delaware	Democrat
Stark, Benjamin	Oregon	Democrat
Trumbul, Lyman	Illinois	Republican
Wade, Benjamin F.	Ohio	Republican
Wilkinson, Morton S.	Minnesota	Republican
Wilmot, David	Pennsylvania	Republican
Wilson, Robert	Missouri	Unionist

A bill to abolish slavery in the District of Columbia was passed during this session of Congress. This legislation was not recommended before hand by President Lincoln, but it was approved by him after its passage. This bill was introduced by Senator Henry Wilson of Massachusetts on December 16, 1861.[101] The bill, besides providing for the abolition of slavery in the District of Columbia, provided compensation for the owners of the slaves and set aside money for the voluntary colonization of negroes in Hayti and Liberia.

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101 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 89.

Senator Garret Davis of Kentucky gave an extended argument against this bill. He did not think that one slave out of a hundred would consent to be colonized when liberated, and as a result the liberated negroes would become a charge and a burden on the white population.[102] Liberation of the slaves, he thought, would result in a war of extermination between the two races because they could not live together in great numbers.[103] Davis considered slavery the normal condition in the United States and the abolition of slavery as the exception. He referred to the protections afforded slavery in the provisions of the Constitution and labelled as unsound the argument that slavery was local and that freedom was universal.[104]

Davis contended that Congress did not have the power to emancipate the slave in a state or in the District of Columbia. The right of property applied just as much in the District of Columbia as in any state was the opinion of Davis, and constitutionally the slaves could not be emancipated or appropriated unless it was for public use.[105] He said that if Congress did have the right to emancipate the slave it did not have the right to limit the compensation to be given for the slave.[106] He objected to enlarging the purposes of the war on the ground that it was breaking the party pledge.[107] Davis added that the wishes of the people of the District should be adhered to rather than the wishes of the abolitionists who had been imported into the District since the war.[108]

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102 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 1191.

103 Ibid., XXXII, p. 1191, 1502.

104 Ibid., XXXII, p. 1334.

105 Ibid., XXXII, p. 1335.

106 Ibid., XXXII, p. 1336.

107 Ibid., XXXII, p. 1338.

108 Ibid., XXXII, p. 1339.

Senator Lazarus W. Powell of Kentucky said that it was unjust to deprive people of their property, and since the people of the District have no representation in Congress it should act as a guardian of their interests. Powell said that emancipating the slaves in the District of Columbia would be an act of bad faith towards Virginia and Maryland who had ceded the land not anticipating any such action. Another bad feature of this legislation was that it would add to the tax burden.[109]

Senator Waitman T. Willey of Virginia did not think that the legislation was wise and expedient at the time. He was afraid that it would be seized upon by the South as evidence that the Republican party intended to destroy slavery and this would have the effect of destroying Union sentiment in the South.[110] Willey described emancipation as an act of cruelty against the negro because the black could not be made equal by legislation. Emancipation, he said, would result in the ruin of the industrial interests of the South and would also be a serious detriment to the labor of the North if the negroes were to be received as equal co-workers.[111] His advice was to wait with emancipation in the District until the state of Maryland emancipated her slaves.[112]

Senator Joseph A. Wright of Indiana said that if slavery were left alone, in ten years or less there would be no slavery in the District of Columbia. He said that the history of slavery legislation pointed in this direction and he called attention to the provision in the Compromise of 1850 for abolishing slave trade in the District.[113] Wright also referred to the President's joint

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109 Cong.Globe, 37th Cong., 2nd Session, XXXII, p. 1523.

110 Ibid., XXXII, p. 1300.

111 Ibid., XXXII, p. 1301.

112 Ibid., XXXII, p. 1302.

113 Ibid., XXXII, p. 1468.

resolution for compensated emancipation, and said that it was contrary to all his recognized notions of states' rights.[114]

Senator James A. Bayard of Delaware argued that several provisions of the bill were unconstitutional.[115] He said that to compensate only loyal persons for the loss of their slaves was contrary to the fifth amendment. According to Bayard the right of trial was defeated by setting up a commission instead of a judicial tribunal to determine loyalty and the amount of compensation to be paid.

Senator Willard Saulsbury of Delaware regarded a free negro population the worst type of population with which any people could be afflicted.[116] He said that any man who would make emancipation a paramount consideration was a disloyal man.[117]

In the House of Representatives one of the leaders against the bill was John J. Crittenden of Kentucky.[118] He described the time as inauspicious for passing such a measure because it would be looked upon by the South as showing the intention of Congress to interfere with the constitutional rights of the states. He regarded the question of emancipation a matter of local concern and not within the power of Congress. This measure, he said, would be but an opening wedge to make war on slavery in the states. He thought that to pass this measure would be to take advantage of the states who did not have respresentation in Congress at this time. It would also be a violation of faith to turn the District to a use not intended by the ceding states. Crittenden said that the intended purpose of the cession was to

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114 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 1469.

115 Ibid., XXXII, p. 1524, 1525.

116 Ibid., XXXII, p. 1359.

117 Ibid., XXXII, p. 1360.

118 Ibid., XXXII, p. 1634, 1636.

serve as a seat for the government and not a refuge for the fugitive slave. Not only would this measure destroy property but it would tear to pieces the social system built around it.

Representative Aaron Harding of Kentucky denounced the plan as one that took property and fixed the price without consulting the people of the District.[119]

Clement L. Vallandigham of Ohio described the measure as class legislation which would prevent the restoration of the Union and be taken advantage of by the Republicans to start a wholesale plan of emancipation.[120]

William H. Wadsworth of Kentucky said that the taking of slaves from disloyal persons was in violation of the fifth amendment of the Constitution.[121]

Hendrick B. Wright of Pennsylvania pointed out that agitation of the question would lead to confusion. He suggested a method whereby the people of the District should be given the right to vote on the issue.[122]

Both William E. Lehman of Pennsylvania and James E. Kerrigan of New York warned against harsh measures which would affect both loyal and disloyal elements of the population.[123]

Charles J. Biddle of Pennsylvania said: "I will not help to make this District the flood gate through which all the smaller channels of industry of the North shall be choked and blackened." He believed that the common sense policy toward slavery was to leave it alone.[124]

The bill to abolish slavery in the District of Columbia passed the Senate on April 3, 1862, by a vote of 29 to 14.[125] The vote was taken in the

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119 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 1646.

120 Ibid., XXXII, p. 1647.

121 Ibid., XXXII, p. 1647.

122 Ibid., XXXII, p. 1643.

123 Ibid., XXXII, p. 1796, 2305,

124 Ibid., XXXII, p. 1644.

125 Ibid., XXXII, p. 1526.

House on April 11, 1862, and resulted in 92 yeas and 38 nays.[126] In this vote there were 23 Democrats, 6 Unionists, 3 Republicans, 1 Union Democrat, 1 Union Republican, 1 Whig, 1 Fusionist, 1 Union Whig, and 1 Conservative. The majority of the delegation from Kentucky and Oregon voted in opposition. A message of approval was received from the President on April 16, 1862.[127]

VOTES ON ABOLISHING OF SLAVERY IN DISTRICT OF COLUMBIA

SENATE VOTE

Senator	State	Party Affiliation
Bayard, James A.	Delaware	Democrat
Carlile, John S.	Virginia	Unionist
Davis, Garret	Kentucky	Old-line Whig
Henderson, John B.	Missouri	Democrat
Kennedy, Anthony	Maryland	Unionist
Latham, Milton S.	California	Democrat
McDougall, James A.	California	Democrat
Nesmith, James W.	Oregon	Democrat
Powell, Lazarus W.	Kentucky	Democrat
Saulsbury, Willard	Delaware	Democrat
Stark, Benjamin	Oregon	Democrat
Willey, Waitman T.	Virginia	Unionist
Wilson, Robert	Missouri	Unionist
Wright, Joseph A.	Indiana	Democrat

The senators who voted against compensated emancipation, confiscation, and the abolishment of slavery in the District of Columbia were Bayard, Carlile, Kennedy, Powell, Saulsbury, and Wilson. In this vote there were 9 Democrats, 4 Unionists, and 1 Old-line Whig.

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126 Cong. Globe, 37th Cong., 2nd Session, XXXII, p. 1648. See appendix for record of this vote. p. 77.

127 Ibid., XXXII, p. 1680.

The arguments used by the opponents of compensated emancipation may be grouped under three headings. First it was unconstitutional, second it was impracticable, and third it was unjust. The proposal was considered unconstitutional because it involved taking money out of the United States treasury to pay for the negroes, without express warrant found in the Constitution, and because it was an attack on the institutions of the state. It was impracticable on the ground that it was not a specific measure but merely provided that Congress ought to cooperate. It would not help break the rebellion, as believed, and, the negroes were not prepared to accept the responsibilities of government and freedom. The adopting of the scheme would result in prolonging the war. It was an unjust measure because it would stir up agitation over slavery and result in insecurity for property and a general feeling of uneasiness. The faith in the President's and the party's pledges not to interfere with slavery would be broken. To call upon the states to sacrifice their domestic institutions was too great a sacrifice after giving loyal support to the Union. The scheme would mean a burden on the free states in the form of taxation and it was an invasion of a field peculiarly belonging to the state where slavery existed. The plan was not desired by the slave states but was engineered from Washington; the President proposed it to satisfy the ultra portion of his party.

Lincoln's views on compensated emancipation can be gleaned from his message to the Senate and the House of Representatives on March 6,

1862.[128] This message recommended the adoption of the joint resolution under discussion. It was an offer made to the slave states whereby they might initiate a program of abolition of slavery and receive compensation for the loss of the property. Lincoln said that the proposal had not set up a claim that the Federal government had a right to interfere with slavery within state limits, but it was a matter of free choice with the people of the state. Lincoln favored the plan because it would prevent the union of the states which had freed their slaves with the southern section. This would break up the hope of a Southern Confederacy which was the plan of the leaders in the rebellion. Lincoln believed that this proposal would bring about gradual abolition and would be better than sudden emancipation. As for the expense which the plan would entail, he considered it small in comparison with the money spent in continuing the war. In addition to the offer placed with the states, there was a threat to the disunionists that all indispensable means for ending the struggle must and would follow their determination to stay out of the Union.

The arguments in opposition to confiscation centered around the questions of the status of the Southern states, constitutionality, practicability, and fairness. By no means was there agreement on the status of the Southern states, but quite generally the congressmen of the opposition took the attitude that the seceding states had a de facto

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128 Richardson, Messages and Papers, VI, p. 68, 69.

government. They disagreed with Lincoln's term, insurrection, and rather chose to call the secession a revolution. With this interpretation they held that the South was entitled to the protection afforded by inter-national law and the rules of civilized warfare. On this ground they argued that private property on land could not be taken and that clemency must be followed. Those who were not certain as to the status of the Southern government contended that we could not deal with the South as belligerents and traitors at the same time. Most of the opponents considered the confiscation bill unconstitutional. They said that it violated several guarantees of the Constitution including due process of law, trial by jury, and the protection against attainders. They denied the constitutional right of the President to declare martial law and the right of Congress to interfere with a local institution. They concluded that the Constitution was ample for all emergencies. Many reasons were given why the measure for confiscation would be impracticable. They reasoned that very little of the proceeds of this confiscation would find its way into the treasury. There would be difficulty in keeping confiscated property intact, especially the perishable forms of property. Colonization of negroes was viewed as visionary and as costing too much. It was argued that emancipation could not be hastened by legislation because the slaves were being freed wherever the army advanced. Several arguments were given to show why the confiscation

bill would be harsh and unfair. It was looked upon as a move to conduct the war for the abolition of slavery, and this was considered to be contrary to the pledges of the administration. Proceedings against property as distinct from persons were portrayed as making it impossible to distinguish between loyal and disloyal persons. Confiscation was described as contrary to the predominant spirit of the age. Under the terms of this bill it would be especially harsh because no distinction was made as to kinds of property. Another fear voiced by the opposition was that emancipation would lead to servile war.

The arguments on the explanatory resolution, which accompanied the confiscation bill, were of a different nature from those just summarized. In this debate we had opposition voiced against caution and half-way measures; also an evidence of an attempt on the part of the Senate to maintain a rather independent course. It is revealed that several senators were very jealous about their powers. They objected to any encroachment on their field by the executive department.

On the subject of confiscation Lincoln in his first annual message said that he had adhered to the original confiscation act for confiscating property used for insurrectionary purposes, but that he would give due consideration to a new law on the subject if it were passed. He emphasized the need of preserving the Union and hence the use of all indispensable means to that end. At the same time he warned against extreme measures that would penalize both

both the loyal and the disloyal.[129] Lincoln had prepared a veto message for the confiscation bill, but upon passage of the explanatory resolution he considered the two as one and approved them.[130] Lincoln's main objection to the confiscation bill was that it provided an attainder beyond the life of the guilty party.[131] This objection was removed by the explanatory resolution. In regard to the freeing of the slaves he said that traitors were subjected to the loss of their slaves as well as any other property; he saw no objection to Congress deciding in advance that they should be free.[132] Lincoln's general war order of July 22, 1862, commanding military generals to seize property for proper military objects and his Proclamation of July 25, 1862, warning all engaged in rebellion to cease under pain of forfeiture were evidences of his intentions to carry out the provisions of the confiscation bill.[133] There was no confusion in Lincoln's mind as to the status of the Southern states during the war. He maintained that the Union was unbroken and that secession was unconstitutional and illegal.[134] On another occasion he said: "The states have their status in the Union, and they have no other legal status."[135]

The opposition represented the bill to abolish slavery in the District of Columbia as unconstitutional, detrimental, unwise, unfair, and unworkable.

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129 Richardson, Messages and Papers, VI, p. 55.

130 Ibid., VI, p. 85.

131 Ibid., VI, p. 86.

132 Ibid., VI, p. 85, 86.

133 Ibid., VI, p. 117, 93.

134 Ibid., VI, p. 7.

135 Ibid., VI, p. 27.

It was considered unconstitutional to pass this bill because the Constitution protects slavery by recognizing property in slaves. Congress could not take property unless it was for public use and compensation was made. Abolition of slavery in the District was viewed as detrimental for various reasons. It was feared that emancipation would result in a war of extermination between the two races. As far as the negro was concerned it would be an act of cruelty because he could not be made an equal of the white man in spite of legislation. By other opponents the free negro was looked upon as a menace. Argument was made that emancipation would be injurious to Southern industry and Northern labor, that it would be destructive of property and the social system that was built around it, and, that Union sentiment would be weakened because it would be regarded as interference with local institutions. The measure would be unfair because it was enlarging the purpose of the war. It was also breaking faith with the ceding states in using the District for another purpose than the one intended. It was taking advantage of people who did not have representation in Congress, and the loyal would suffer as well as the disloyal. The policy was considered unwise because it would mean an opening wedge for interference with slavery in the states. It was argued that emancipation would come eventually and that the best policy, for the present, was to leave it alone. The practicability of the bill was denied on the ground that slavery was the normal condition of the negro in this country and the freed negro would refuse to colonize, and, as a consequence, would become a burden on the white population.

Lincoln did not take the initiative on the abolition of slavery in the District of Columbia, but indications were that it met with his approval. In his message of approval April 16, 1862, he said that he never doubted the constitutional authority of Congress to abolish slavery in the District and

that the only question arising was one of expendiency, arising in view of the circumstances. He said that the bill satisfactorily included the principles of colonization and compensation.[136]

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136 Richarson, Messages and Papers, VI, p. 73.

CHAPTER III

THIRD SESSION OF 37th CONGRESS

The matter of suspending the privilege of the writ of habeas corpus was discussed in the special session of the 37th Congress in connection with the joint resolution to approve the acts of the President, but this resolution never came to a vote. The act of August 6, 1861, which validated the acts, proclamations, and orders of the President did not include the President's orders suspending the writ of habeas corpus, it merely approved the acts pertaining to military affairs. In the second session of the 37th Congress no law was passed on the subject of habeas corpus, but an act was finally evolved and passed in the closing hours of the third session of the 37th Congress. Before discussing the habeas corpus act of this session a brief review of the Merryman case and Chief Justice Taney's opinion in this case will be considered. John Merryman of Baltimore county, Maryland, was arrested May 25, 1861, being charged with holding a commission as Lieutenant in a company declaring its purpose of armed hostility against the government, with being in communication with the rebels, and with various acts of treason. He was placed in Fort McHenry, which was in command of General George Cadwalader. Immediately after his arrest Merryman forwarded a petition to Taney telling of his arrest and asking for a writ of habeas corpus and a hearing. The writ was issued for the 27th, but Cadawalder failed to respond, giving as a reason that he was authorized by the President to suspend the writ. On May 27th Taney issued a writ of attachment directing the United States Marshal, Bonifant, to bring General Cadawalder before him on May 28th to answer for his contempt in

refusing to free Merryman. The Marshal replied on the 28th that he had gone to the fort, had been refused admittance, and was told that there was no answer to his writ.[137] Referring to the above case Taney contended that the detention of the prisoner was unlawful because the President of the United States could not under the Constitution and the laws suspend the privilege of the writ of habeas corpus, nor authorize any military officer to do so. He stated further that a military officer had no right to arrest and detain a person not subject to the rules of war for an offense against the laws of the United States except through the judicial authority.[138] If a subject is arrested by military authority, he held, it is the duty of the officer to deliver the prisoner immediately to the civil authority to be dealt with according to law. Taney further held that the power to suspend the writ was in the hands of Congress. He referred to the Burr trial for conspiracy and said that at that time Jefferson did not assume the right to suspend the writ, but he gave the information so that Congress might act if it saw fit to do so. He pointed out that the clause pertaining to the suspension of the writ was found in Article I of the Constitution, devoted to the legislative department, and that Article II devoted to the executive department contained no such grant of power.[139] Referring to the practice in England, he said, that the power to suspend the writ rested with Parliament alone. He gave an opinion from Story's commentaries in support of the theory that the power of suspending the writ belonged to Congress. "Hitherto no

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137 McPherson, Edward, History of the Rebellion, Washington, D. C., 1865, p. 154.

138 Ibid., p. 155.

139 Ibid., p. 156.

suspension of the writ has ever been authorized by Congress since the establishment of the Constitution. It would seem, as the power is given to Congress to suspend the writ of habeas corpus in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body."[140] Taney argued that since the courts were open the suspected treason should have been reported to the district attorney and dealt with by judicial process. He described the procedure followed in the case of Merryman as military usurpation and if it were followed he said: "The people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the army officer in whose military district he may happen to be found." In closing his opinion Taney said, referring to the President: "It will then remain for that high officer in fulfillment of his constitutional obligation to take care that the laws be faithfully executed, to determine what measures he will take to cause the civil process of the United States to be respected and enforced."[141] Taney ordered the proceedings of the case to be filed in the United States circuit court for the District of Maryland; he directed the clerk to transmit a copy under seal to the President.

The habeas corpus bill (H. R. No. 591) was introduced by Representative Stevens of Pennsylvania on December 5, 1862. It was called a bill to indemnify the President and other persons for suspending the writ of habeas corpus and acts done in pursuance thereof.[142] After the bill passed the House it was

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140 McPherson, Edward, History of the Rebellion, p. 157.

141 Ibid., p. 158.

142 Congressional Globe, 37th Cong., 3rd Session, Washington, D. C., 1863, XXXIII, p. 14.

amended and sent to the Senate. The differences caused by the amendment were settled by a conference of the two Houses and the bill in its final form was passed. The habeas corpus act contained 7 sections, the last 4 dealing with indemnities.[143] Section I authorized the President to suspend the writ of habeas corpus during the present rebellion whenever in his judgment the public safety required it. Sections 2 and 3 made provisions relative to state prisoners. The Secretary of State and the Secretary of War were directed to furnish lists of state prisoners to the judges of the district and circuit courts of the United States. If the grand juries found no indictment against them they, after taking the oath of allegiance, were to be discharged by order of the judge. Where the judges were not furnished with lists they could, upon proper petition, discharge the prisoner. Section 4 provided that any order of the President, or under his authority made during the rebellion, would be defense in all courts to any action civil or criminal for any search, seizure, or arrest. The remaining sections provided for the removal of suits, referred to in Section 4, from state to Federal courts except where judgment was in favor of the defendant. A two-year limitation was imposed after which no prosecution or litigation could be commenced.

Many of the main arguments against the habeas corpus act were made by Senator James W. Wall of New Jersey. He said that the bill was an outgrowth of the heresy that the right to suspend the writ of habeas corpus was an executive and not a legislative power.[144] He maintained that up to 1861 there was a unanimity of opinion to the effect that it was a legislative power,

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143 Cong. Globe, 37th Cong., 3rd Session, XXXIII, Appendix, p. 217.

144 Ibid., XXXIII, p. 1460.

but this bill proposed to leave the power at the option of the President. With reference to this Wall said: "That which the luminous perception of Marshall, Kent, Story, and Curtis could not discover has been reserved for the keener optics of Bates and Lincoln."[145] He referred to a debate between Patrick Henry and Governor Randolph in the Virginia state convention in 1788. Patrick Henry had assailed the Constitution because it conferred the power to suspend the writ upon the legislature. In reply to this Governor Randolph said: "I contend, Mr. President, that the habeas corpus in this Constitution is at least on as good and secure a footing as in England. In that country its suspension depends upon the Legislature and not upon the Crown. That great writ of right can only be suspended here in the same way, by the Legislature in cases of extreme peril, never by the Executive."[146] Wall opposed the bill because it proposed to legalize an illegality and because it was an attempt on the part of the legislature to shelter the executive from the consequences of his unconstitutional acts. In opposition to this indemnity feature he quoted a Supreme Court decision: "That if the President should mistake the construction of an act of Congress or of the Constitution, and, in consequence of it, should give instructions not warranted by the act or the Constitution any aggrieved party might recover damages against the officer acting under such instructions, which though given by the President, would furnish no justification or excuse."[147] Wall objected to the bill because it would clothe the President with the powers of a Roman dictator. He said that the passage of the bill would destroy all the protections in the Constitution for life, liberty, and

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145 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 1462.

146 Ibid., XXXIII, p. 1462.

147 Ibid., XXXIII, p. 1461. Quoting from 2 Cranch 119.

property.[148]

Senator Lazarus W. Powell of Kentucky held that the bill was in violation of the constitutional provision which defines the jurisdiction of the Federal courts. According to this bill the Federal courts are given power in a field not granted to them.[149] Powell charged the President of being guilty of attacking the Constitution on every vital point. He said: "Sir, I do aver that the first Charles and the second James, both put together, did not commit as many infractions on the British Constitution by nine-tenths, as Abraham Lincoln has done upon the Constitution of the United States."[150] Powell contended that there was no power in this government to arrest a citizen except upon warrant and in a mode prescribed in the Constitution by the 4th, 5th, and 6th amendments.[151] Powell claimed that there were now two wars being waged, one between the North and the South and Lincoln's war on the Constitution. The result of the exercise of arbitrary power, Powell said, would be to make disunion permanent.[152]

Senator Willard Saulsbury spent most of his time launching a vicious attack on the President. He went so far in the course of his discussion that he was removed from the Senate chamber by the sergeant-at-arms. A resolution for his expulsion was introduced by Senator Clark on January 28th, and on the following day Saulsbury offered an apology to the Senate. In his attack on the President Saulsbury accused him of being influenced in his action by the flattery of his advisers. He said: "Thus has it been with Mr. Lincoln...

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148 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 1460.

149 Ibid., XXXIII, p. 535.

150 Ibid., XXXIII, p. 1465.

151 Ibid., XXXIII, p. 1472.

152 Ibid., XXXIII, p. 542.

a weak and imbecile man; the weakest man that I ever knew in high place; for I have seen him and conversed with him, and I say here, in my place in the Senate of the United States, that I never did see or converse with so weak and imbecile a man as Abraham Lincoln, President of the United States.[153] The bill, he said, if passed would legalize the most despotic exercise of power that was ever exercised in any government since the institution of human society. He contimued: "If I wanted to paint a despot, a man perfectly regardless of every constitutional right of the people, whose sworn servant, not ruler, he is, I would paint the hideous form of Abraham Lincoln."[154]

Senator James A. Bayard of Delaware argued that the bill would destroy the power of the states as regards their own criminal jurisprudence by removing trials from the state courts into the United States circuit courts. Bayard stated that the United States courts could not render judgment in a criminal case for an offense against the laws of a state nor would the President have power to pardon a man convicted of an offense against the laws of a state.[155] Bayard said that the court procedure proposed in the bill would mean a denial of justice. The transferring of cases to the United States courts would mean that the whole court machinery would be in the hands of the executive.[156] Justice would be impossible, said Bayard, because no matter how wrong the act which was committed it would be sufficient excuse to say that it was ordered by the President.[157] Bayard denied the justification or the necessity of the bill to prosecute the war, and declared

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153 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 549.

154 Ibid., XXXIII, p. 550.

155 Ibid., XXXIII, p. 537.

156 Ibid., XXXIII, p. 546.

157 Ibid., XXXII, p. 547.

that if the bill passed and an attempt was made to enforce it the result would be revolution.[158]

Senator John S. Carlile of Virginia said that the suspension of the writ of habeas corpus in itself did not authorize arbitrary arrests, but that civil process would still have to be followed in making arrests.[159]

The main arguments in the House were given by Representative Daniel W. Voorhees of Indiana. He described the policies of the President as being usurpatious of judicial and legislative power and as tending to subvert republican institutions.[160] He traced the development of liberty in England and showed how we had incorporated those results in our own Constitution.[161] Voorhees called the writ of habeas corpus the active agent for the protection of the liberty that we had sacrificed to secure. He said: "The writ of habeas corpus was originated for the purpose of controlling one man and his subordinates; and yet it is claimed, in this enlightened age, that that very man can control it."[162] Voorhees contended that only Parliament in England and Congress in the United States could judge of the necessity and could suspend the writ of habeas corpus. He said that if he were wrong in the opinion he did so with men like Blackstone, Hale, Mansfield, Coke, Kent, Story, and John Marshall. Voorhees referred to the war as a fraud. He said that it was no longer waged to restore the Union but to emancipate slaves by the sword and by direct taxation and to strike at the constitutional rights of the states.[163]

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158 Cong. Globe, 37th Cong., 3rd Session, XXXIII p. 1476.

159 Ibid., XXXIII, p. 552.

160 Ibid., XXXIII, p. 1058.

161 Ibid., XXXIII, p. 1059.

162 Ibid., XXXIII, p. 1060.

163 Ibid., XXXIII, p. 1063.

Representative William S. Holman of Indiana said that perhaps the suspension of the writ could be justified in the sections of the Union where treason was in the ascendency but that there was no argument for doing it in sections where the people were loyal and the civil power had not been impaired.[164]

Representative John D. Stiles of Pennsylvania maintained that the supporters of the bill admitted that the President had assumed power which was unwarranted by the Constitution. He quoted from a speech made by Stevens, who was the author of the habeas corpus bill: "But I was proceeding to say that I did not agree myself that the President of the United States has the right to suspend the writ of habeas corpus except until the meeting of Congress. Then it seems to me that we have a right to give him that power. As there has been illegal exercise of the power before, one arising from necessity, a bill of indemnity is the proper remedy which has been practicable for the government where it has been necessary for the executive, for the safety of the country, to assume the responsibility of acts not contemplated by the Constitution."[165] Stiles said that this bill sought to shield unwarranted exercise of power and as such was in the nature of an ex post facto law.[166]

Representative Charles A. Wickliffe of Kentucky argued that the jurisdiction of the Federal courts was defined by the Constitution and that their jurisdiction did not extend to cases between citizens of the same state for personal wrongs. He added that the law of military necessity did

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164 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 1105.

165 Ibid., XXXIII, p. 1088.

166 Ibid., XXXIII, p. 1087.

not regulate or define the jurisdiction but that the Judiciary Act of 1789, Section 25, made ample provisions for the removal of cases from state to Federal courts.[167]

Representative George H. Yeaman of Kentucky objected to the bill on the ground that it favored the wrong-doer and injured the wronged man. His opinion was that the purpose of transferring cases from the state to the Federal courts was to wear out the plaintiff with costs. Another possibility was that the Federal courts would be inclined to favor the defendant.[168]

The vote on the habeas corpus bill in the Senate was 33 for and 7 against.[169] In this vote there were 5 Democrats and 2 Unionists. The bill passed the House by a vote of 99 to 44.[170] In this vote there were 30 Democrats, 5 Unionists, 3 Republicans, 2 Union Whigs, 1 Union Democrat, 1 Conservative Unionist, 1 Whig, and 1 Fusionist. The majority of the delegation from Kentucky and Oregon voted in opposition.

HABEAS CORPUS ACT

SENATE VOTE

Senate	State	Party Affiliation
Bayard, James A.	Delaware	Democrat
Carlile, John S.	Virginia	Unionist
McDougall, James A.	California	Democrat
Powell, Lazarus W.	Kentucky	Democrat
Turpie, David	Indiana	Democrat
Wall, James W.	New Jersey	Democrat
Wilson, Robert	Missouri	Unionist

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167 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 1103.

168 Ibid., XXXIII, p. 1086.

169 Ibid., XXXIII, p. 554.

170 Ibid., XXXIII, p. 1479. For the record of this vote see appendix, p. 78.

The emancipation question was debated in this session in connection with the bill (H. R. No. 634) to abolish slavery in Missouri. This bill was introduced by Representative John W. Noell of Missouri December 15, 1862.[171] The Senate offered a substitute in the form of an amendment January 16, 1863.[172] Both bills embodied the compensated emancipation feature but there was considerable difference in the amount to be paid and the time in which the emancipation was to take place. The amount to be paid Missouri was twice as large in the Senate bill, and the length of time during which emancipation could take place was much longer. The House bill provided for a colonization plan while the Senate bill did not. Although no bill on this subject was enacted into law during this session this apparently represented an attempt to carry out a scheme of compensated emancipation in accordance with Lincoln's plan. In the course of the debate in Congress on emancipation in Missouri many of the old arguments on the slavery question were renewed in addition to the specific arguments on the bill itself. Occasionally there were arguments on the President's Emancipation Proclamation, also.

Senator Garret Davis of Kentucky denied that Congress had the power to appropriate money for emancipating the slaves of Missouri. He did not regard the joint resolution for compensated emancipation adopted by the last session of Congress as a practical measure. The fact that the President had proposed an amendment to the Constitution giving Congress the right to appropriate money for the emancipation of slaves was evidence that Lincoln did not believe

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171 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 91, 207.

172 Ibid., XXXIII, p. 351.

that Congress possessed the power.[173] Davis said that the plan of emancipation in Missouri was unconstitutional because it constituted a compact between Missouri and the United States and according to the Constitution no state should enter into a treaty, alliance, or confederation. Missouri had the right to abolish slavery and the right to introduce it By the terms of this bill she would be barred, in consideration of benefits, from re-introducing slavery.[174] Davis contended that emancipation could not be accomplished by the President through the war power. In our government, he said, the war power was vested in Congress which had the power to declare war and the power to suppress insurrection. The President had no power, according to Davis, to recognize a condition of domestic trouble in a state until Congress had passed a law recognizing that condition.[175] Davis maintained that the bill was inexpedient and unjust for Missouri. The compensation was not sufficient to pay half the average value of the slaves, he said. In his estimation both loyal and disloyal persons should be paid for their slaves. He considered a time of stress a poor time to secure a basis for the valuation of the slaves.[176]

Senator Lazarus W. Powell of Kentucky said that the measure was destructive of the rights of the states. He claimed that the President and his party had abandoned their pledge and platform and had embraced the higher law doctrine. The President had violated that part of the Chicago platform which he had said was a law unto him. He referred to the section which stated:

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173 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 781.

174 Ibid., XXXIII, p. 782.

175 Ibid., XXXIII, p. 796.

176 Ibid., XXXIII, p. 783.

"That the maintenance inviolate of the rights of the states, and especially the rights of each state to order and control its own domestic institutions according to its own judgment exclusively, is essential to that balance of powers on which the perfection and endurance of our political fabric depends."[177] Powell termed this proposal with a state as interference because Missouri would not emancipate her slaves without aid from the United States treasury. Powell said that it was dishonest and morally wrong to emancipate the slaves in Missouri. It was dishonest to unconstitutionally tax the people of the United States for the purpose of paying people for property they did not wish to part with. Furthermore it was not morally right to take property away, not for the purpose of benefitting people, but for the purpose of gratifying the fanatical zeal of the party temporarily in power. Powell maintained that the doctrine of states' rights was the only thing that would save the liberties of the people during the crisis, because every protection in the Constitution for the citizen had been ruthlessly set aside by the Administration."[178]

Senator William A. Richardson of Illinois reviewed the history of emancipation in the United States and pointed out that it was a history of state action without Federal aid. He cited the cases of Pennsylvania and Rhode Island in the days of the Articles of Confederation, and New Hampshire, New York, New Jersey, and Connecticut since the adoption of the Constitution.[179] Richardson called the President's colonization scheme absurd. He said: "Why, sir, you have not ships enough, nor money enough on the face of the earth to colonize, in 37 years, these Africans whom you propose to free; and I doubt if you can in 300 years."[180]

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177 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 800, 801.

178 Ibid., XXXIII, p. 802.

179 Ibid., XXXIII, p. 788.

180 Ibid., XXXIII, p. 789.

Richardson stated that General Tuttle, on the recommendation of Stanton, had in violation of the state constitution distributed freed negroes in Illinois. Richardson charged Lincoln with having knowledge of this instance. He said: "While I do not give the President much credit for information I must insist he knew this. He lived in Illinois from early manhood....he had been in the legislature there, came to Congress from there, and I wish to God he was back there now, and we had some citizen with thoughts and intellect and love of country supreme to his, with thoughts elevated above the negro, who would devote his thoughts and soul to save a Union dear to us, and a Constitution priceless in value."[181] Richardson said that the emancipation scheme would still further lessen the value of our securities which were selling on the market at 50 cents on the dollar. He ridiculed the argument that the Emancipation Proclamation was a war measure that would weaken the enemy by removing the slave who raised the crops to feed the army. He said that the only way that use could be made of the negro was to keep him in slavery; if he were freed he would be an expense and a calamity.[182]

Senator Willard Saulsbury of Delaware held that our system of government would be abrogated if the emancipation scheme were adopted. We would no longer have a government of states with co-equal power; Missouri would be surrendering her sovereignty while others might retain theirs. Carrying the same idea further, Saulsbury said a state might for money consideration surrender its representation in Congress.[183] Saulsbury contended that even if Missouri incorporated a provision abolishing slavery in its constitution

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181 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 789.

182 Ibid., XXXIII, p. 788, 789.

183 Ibid., XXXIII, p. 897.

it would not have binding force because the people might from time to time change their organic law. Saulsbury denied that emancipation could be accomplished under the war power because the powers of the government were not enlarged by war. He said that the only possible grant of such power in the Constitution would be the clause giving Congress the power to lay and collect taxes and that power was limited. He cited opinion from the forty-first number of the Federalist to show that the above power was limited. "The power to lay and collect taxes and provide for the general welfare is not mere arbitrary power to be exercised by Congress according to their own whim and caprice, but is to be determined by the enumerated powers in the Constitution."[184]

Senator David Turpie of Indiana said that the emancipation proposal by a money appeal interfered with the rights of property in Missouri. He claimed that because of interference with slavery the executive had lost the confidence of people of both sections. He accused the President of being thoroughly imbued with the fanatical abolition notions of the New England school. Aside from the arguments on emancipation Turpie declared that the Union was founded upon the idea that the reserved rights of the states should not be interfered with by the Federal government. He maintained that the states existed before the Union and that they made the Union.[185]

Senator Anthony Kennedy of Maryland feared that the emancipation policy would prolong the war. He suggested that emancipation should be withheld until the people of the state asked for it.[186]

In the House of Representatives only a few brief speeches were made on the subject of emancipation in Missouri. Representative Andrew J. Clements of

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184 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 897, 899.

185 Ibid., XXXIII, p. 784.

186 Ibid., XXXIII, p. 624.

Tennessee opposed the bill on the ground that it was sectional. He said that all the border slave states were in about the same position as Missouri, but the bill pertained only to the interests of Missouri. He favored a bill on a larger scale, that would serve as a basis for evaluation of slaves in all of the border slave states.[187]

Representative Charles A. Wickliffe in a few brief remarks, explained that the majority of the people in Kentucky were not in favor of the measure proposed for Missouri nor of the Emancipation Proclamation.[188]

The Senate vote of the Missouri emancipation bill was 23 for and 18 against.[189] In this vote there were 7 Democrats, 6 Republicans, 3 Unionists, and 1 Old-line Whig. Senator Carlile, McDougall, Powell, Turpie, Wall, and Wilson voted in opposition in both the habeas corpus and the Missouri emancipation votes. The House vote was 73 for and 46 against.[190] The majority of the delegation from Indiana, New Jersey, and Oregon voted in opposition. In the opposition vote there were 28 Democrats, 9 Republicans, 6 Unionists, 2 Union Whigs, and 1 Whig.

BILL FOR EMANCIPATION IN MISSOURI

SENATE VOTE

Senator	State	Party Affiliation
Carlile, John S.	Virginia	Unionist
Cowan, Edgar	Pennsylvania	Republican
Davis, Garret	Kentucky	Old-line Whig
Fessenden, Wm. Pitt	Maine	Republican
Grimes James W.	Iowa	Republican
Harding, Benjamin F.	Oregon	Republican
Kennedy, Anthony	Maryland	Unionist
Lane, James Henry	Indiana	Republican
McDougall, James A.	California	Democrat
Nesmith, James W.	Oregon	Democrat

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187 Cong. Globe, 37th Cong., 3rd Session, XXXIII, p. 207.

188 Ibid., XXXIII, p. 207.

189 Ibid., XXXIII, p. 903.

190 Ibid., XXXIII, p. 209. For record of votes see appendix, p. 79.

BILL FOR EMANCIPATION IN MISSOURI

SENATE VOTE (Continued)

Senator	State	Party Affiliation
Powell, Lazarus W.	Kentucky	Democrat
Richardson, Wm. A.	Illinois	Democrat
Saulsbury, Willard	Delaware	Democrat
Ten Eyck, John C.	New Jersey	Republican
Turpie, David	Indiana	Democrat
Wall, James W.	New Jersey	Democrat
Wilson, Robert	Missouri	Unionist

To sum up the case of the opposition in Congress to President Lincoln's policies, the habeas corpus act was opposed on the grounds that it was unconstitutional, unjust, and arbitrary. It was branded as unconstitutional because the suspension of the writ was held to be as a legislative and not an executive power. It was contended that it violated the provision in the Constitution for the protection of life, liberty, and property. The opponents contended further that the act gave jurisdiction beyond the Constitution to the Federal courts and that the act was in the nature of an ex post facto law. The act was pictured as unjust to the states and to individuals. The power of the states over their own criminal jurisprudence would be destroyed by removing the cases to the Federal courts. Individuals would be denied justice because of increased court costs and chances of favoritism for the defendant since the court machinery would be in the hands of the executive. It was regarded as unjust also because the indemnity feature of the act legalized and shielded the executive in wrong doing. The act was considered arbitrary because it would clothe the President with the powers of a dictator; this grant was viewed as highly dangerous when placed in the hands of a man who, they said, had attacked the Constitution at every

point. Taney's opinion has already been given.

Lincoln's main argument in justification of his act in suspending the writ of habeas corpus was that a dangerous emergency existed which threatened the public safety, and inasmuch as the Constitution had not stated who should suspend the writ it was logical that he could not permit the danger to run its course until Congress assembled. On the same occasion that Lincoln gave the above opinion he also pointed out that the power to suspend the writ had purposely been exercised very sparingly.[191] In closing his remarks on habeas corpus Lincoln stated that probably an opinion would be presented on the subject by the Attorney-General. Whether there should be any legislation on the subject, Lincoln said, he would leave to the better judgment of Congress.[192] Attorney-General Bates's opinion was given on July 5, 1861, one day after Lincoln gave his argument on habeas corpus in his special message to Congress. There was marked agreement between the two. Bates said that the President was in a peculiar sense the preserver, protector, and defender of the Constitution and that he was by duty bound to put down insurrection and violations of Federal law. The means of enforcement were placed at his command, but the manner in which they were to be used was left to the discretion of the President. On the nature of the power to suspend the writ Bates said: "This power of the President is no part of his ordinary duty in time of peace; it is temporary and exceptional, and was intended only to meet a pressing emergency."[193]

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191 Richardson, Messages and Papers, VI, p. 25.

192 Ibid., VI, p. 25.

193 McPherson, History of the Rebellion, p. 159, 160, 161.

The Missouri emancipation bills were opposed on grounds of unconstitutionality, injustice, impracticability, inexpediency, and dishonesty. The opponents stated that Congress did not have the power to appropriate money for such a purpose but that an amendment to the Constitution would be necessary. They argued also that the President did not have the power to emancipate the slaves under the war power because that power belonged to Congress. The bill was termed a compact between Missouri and the United States, and such a compact was unconstitutional. Various reasons were given to show that the proposal was unjust. It would mean interference with and destruction of the rights of the states. It would be unfair to the states that had accomplished emancipation without aid from the Federal government. The freed negroes would be a menace to the free states which had provisions in their constitutions barring the admittance of negroes into the state. The proposal would mean the surrendering of sovereignty by Missouri, and she no longer would be a co-equal state. Lincoln's colonization scheme was judged to be impracticable because it would cost too much and because it could not be accomplished within a reasonable length of time. Lincoln's Emancipation Proclamation was described as useless as a war measure because the negroes when freed would be a burden rather than a help in winning the war. The emancipation scheme was deemed inexpedient because the added expenditure would further lessen the value of securities on the market and because a time of crisis was not a good time to establish valuation on the slaves. The measure was described as dishonest because it taxed the people of the United States to pay for property with which Missouri did not want to part.

Lincoln revealed caution and foresight in his policies toward the slavery issue. His first Inaugural Address disclaimed any intention of interfering

with slavery in the states where it existed, but he warned the South that secession would wipe out slavery.[194] In his plan for compensated emancipation he invited the initiatory steps to be taken by the states themselves and denied the intention of the Federal government to interfere with slavery in the states. Again he warned the Southern states that steps indispensable for ending the war would come.[195] Lincoln in his second annual message supported very carefully the merits of his plan for compensated emancipation.[196] He maintained that if slavery were ended the war would cease, and he believed that compensated emancipation would secure a more permanent peace than one accomplished by force alone. He said that the cost of thus emancipating the slaves would be less and more convenient than the additional expense of continuing the war with its attendant loss of life and blood. In prosposing the amendments incorporating his scheme of compensated emancipation he expressed due respect for the views of Congress. Before issuing his Emancipation Proclamation, "Lincoln gave 100 days notice that he would take the step as a war measure to break the rebellion.[197] When he issued the Proclamation he said that he believed it was warranted by the Constitution from military necessity.[198]

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194 Richardson, Messages and Papers, VI, p. 5.

195 Ibid., VI, p. 68, 69.

196 Ibid., VI, p. 136-141.

197 Ibid., VI, p. 97.

198 Ibid., VI, p. 159.

SUMMARY

An analysis of the opposition votes in the House of Representatives revealed that the opposition was decidedly Democratic. The membership of the House in the 37th Congress consisted of 106 Republicans, 42 Democrats, 28 Unionists, and 2 vacancies. This made a total membership of 178, of which the Democrats were 24%. The percentage of the total Democratic representation in Congress found in opposition in all the measures ranged from 26% to 71%. In six of the seven measures analyzed the percent of Democratic opposition was 52% or over. There were 36 representatives who voted against a majority of the measures. In this group of 36 there were 23 Democrats. Pendleton of Ohio and Shiel of Oregon voted against all of the measures. The 36 representatives came from the states of Ohio, Pennsylvania, Maryland, Indiana, Kentucky, Missouri, Illinois, New Jersey, New York, Massachusetts, and Oregon. A majority of the delegation from the states of Maryland and Oregon voted against a majority of the bills. Representatives Crittenden, Wickliffe, Voorhees, Vallandigham, Wm. Allen, Holman, and Harding took an active part in the opposition debates. Four of these were Democrats.

The senators who voted against a majority of the bills were Bayard, Carlile, Kennedy, McDougall, Powell, Saulsbury, and Robert Wilson. Powell of Kentucky voted against all of the measures. Four of these seven senators were Democrats. They were from the states of Delaware, Virginia, Maryland, California, Kentucky and Missouri. The most active and continuous opponents in the Senate debates were Powell, Saulsbury, Davis, and Bayard. Four of these five were Democrats.

The arguments of the opposition throughout the debate in the 37th Congress, in my opinion, were met very well by Lincoln. Perhaps the main argument used against Lincoln was that he had pursued a course of action in violation of the Constitution. Lincoln revealed by his utterances and his policies that the Union and the Constitution were paramount objects to be preserved. He regretted that the war had been forced upon the country, but he defended the use of the war-power on the ground that the Union and the Constitution were threatened, and as the chief executive it was his duty to protect both. The opposition argument that the rights of the states and the people were interfered with was also adequately refuted by Lincoln. Whenever Lincoln suggested a policy affecting the rights of the loyal states, it was always in the form of an offer not in the nature of dictation by the Federal government. The proposals if adopted were such as would aid rather than injure the state. In his statements to the seceding states Lincoln announced that because of their rebellion against Federal authority they would have to suffer the consequences of such unconstitutional action. Even in the policy toward the rebel states Lincoln showed unusual fairness. His advice was always against extreme measures, and when far-reaching steps were taken it was always after adequate warning in advance. This left with the rebel states a choice if they were willing to make use of it. Lincoln was an unusually successful leader because he did not assume an independent course of action but took into consideration the wishes of Congress and other officials in the government. As a result he emphasized the spirit of cooperation rather than dictation and independence. When we consider that Lincoln served in a two-

fold capacity, one as President and one as Commander-in-Chief of the army and navy, that he had to deal with both loyal and disloyal elements of the population at the same time, we cannot help but feel that his position was very delicate and that he played the dual role admirably well.

Below is a list of the representatives in the 37th Congress who voted in opposition in the majority of the measures.

Representative	State	Party Affiliation
Allen, William	Ohio	Democrat
Ancona, Sydenham E.	Pennsylvania	Democrat
Baily, Joseph	Pennsylvania	Democrat
Biddle, Charles J.	Pennsylvania	Democrat
Calvert, Charles B.	Maryland	Union Whig
Cox, Samuel S.	Ohio	Democrat
Cravens, James A.	Indiana	Democrat
Crisfield, John W.	Maryland	Unionist
Crittenden, John J.	Kentucky	Unionist
Dunlap, George W.	Kentucky	Whig
Grider, Henry	Kentucky	Whig
Hall, Wm. A.	Missouri	Democrat
Harding, Aaron	Kentucky	Unionist
Holman, Wm. S.	Indiana	Democrat
Johnson, Philip	Pennsylvania	Republican
Knapp, Anthony L.	Illinois	Democrat
Law, John	Indiana	Democrat
Mallory, Robert	Kentucky	Union Democrat
Menzies, John W.	Kentucky	Unionist
Morris, James R.	Ohio	Democrat
Noble, Warren P.	Ohio	Democrat
Norton, Elijah H.	Missouri	Democrat
Pendleton, George H.	Ohio	Democrat
Perry, Nehemiah	New Jersey	Democrat
Shiel, George K.	Oregon	Democrat
Smith, E. H.	New York	Democrat
Steele, John B.	New York	Democrat
Steele, Wm. G.	New Jersey	Democrat
Thomas, Benjamin F.	Massachusetts	Conservative Unionist
Vallandigham, Clement L.	Ohio	Democrat
Voorhees, Daniel W.	Indiana	Democrat
Wadsworth, Wm. H.	Kentucky	Republican
Ward, Elijah	New York	Democrat
Webster, Edwin H.	Maryland	Unionist
Wickliffe, Charles A.	Kentucky	Union Whig
Wood, Benjamin	New York	Democrat

Senate Opposition in Majority of Bills

Senator	State	Party Affiliation
Bayard, James A.	Delaware	Democrat
Carlile, John S.	Virginia	Unionist
Kennedy, Anthony	Maryland	Unionist
McDougall, James A.	California	Democrat
Powell, Lazarus W.	Kentucky	Democrat
Saulsbury, Willard	Delaware	Democrat
Wilson, Robert	Missouri	Unionist

APPENDIX

OPPOSITION HOUSE VOTES

OPPOSITION HOUSE VOTE ON BILL(S. No. 69)

INCLUDING

AMENDMENT TO RATIFY ACTS OF THE PRESIDENT

Representative	State	Party Affiliation
Allen, William	Ohio	Democrat
Ancona, Sydenham E.	Pennsylvania	Democrat
Browne, George H.	Rhode Island	Union Democrat
Calvert, Charles B.	Maryland	Union Whig
Cox, Samuel S.	Ohio	Democrat
Crisfield, John W.	Maryland	Unionist
Jackson, James S.	Kentucky	Unionist
Johnson, Philip	Pennsylvania	Republican
May, Henry	Maryland	Democrat
Noble, Warren P.	Ohio	Democrat
Pendleton, George H.	Ohio	Democrat
Rollins, James S.	Missouri	Conservative
Shiel, George K.	Oregon	Democrat
Smith, E. H.	New York	Democrat
Vallandigham, Clement L.	Ohio	Democrat
Voorhees, Daniel W.	Indiana	Democrat
Wadsworth, Wm. H.	Kentucky	Republican
Ward, Elijah	New York	Democrat
Webster, Edwin H.	Maryland	Unionist

VOTES ON CONFISCATION BILL (S. No. 25)

HOUSE VOTE

Representative	State	Party Affiliation
Allen, Wm.	Ohio	Democrat
Ancona, Sydenham E.	Pennsylvania	Democrat
Bailey, Joseph	Pennsylvania	Democrat
Browne, George H.	Rhode Island	Union Democrat
Burnett, Henry C.	Kentucky	Democrat
Calvert, Charles B.	Maryland	Union Whig
Cox, Samuel S.	Ohio	Democrat
Cravens, James A.	Indiana	Democrat
Crisfield, John W.	Maryland	Unionist

VOTES ON CONFISCATION BILL (S. No. 25)

HOUSE VOTE (Continued)

Representative	State	Party Affiliation
Crittenden, John J.	Kentucky	Unionist
Diven, Alexander S.	New York	Republican
Dunlap, George W.	Kentucky	Unionist
Dunn, Wm. McKee	Indiana	Republican
English, James E.	Connecticut	Democrat
Fouke, Philip B.	Illinois	Democrat
Grider, Henry	Kentucky	Whig
Haight, Edward	New York	Democrat
Hale. James T.	Pennsylvania	Republican
Harding, Aaron	Kentucky	Unionist
Holman, Wm. S.	Indiana	Democrat
Horton, Valentine B.	Ohio	Republican
Jackson, James S.	Kentucky	Unionist
Johnson, Philip	Pennsylvania	Republican
Law, John	Indiana	Democrat
May, Henry	Maryland	Democrat
McClernand, John Alexander	Illinois	Democrat
McPherson, Edward	Pennsylvania	Republican
Mallory, Robert	Kentucky	Union Democrat
Menzies, John W.	Kentucky	Unionist
Morris, James R.	Ohio	Democrat
Noble, Warren P.	Ohio	Democrat
Norton. Elijah H.	Missouri	Democrat
Odell, Moses F.	New York	Democrat
Pendleton, George H.	Ohio	Democrat
Porter, Albert G.	Indiana	Republican
Reid, John W.	Missouri	Democrat
Robinson, James C.	Illinois	Democrat
Rollins, James S.	Missouri	Conservative
Shiel, George K.	Oregon	Democrat
Smith, E H.	New York	Democrat
Steele, John B.	New York	Democrat
Stratton, John L. N.	New Jersey	Republican
Thomas, Francis	Maryland	Union Republican
Vallandigham, Clement L.	Ohio	Democrat
Voorhees, Daniel W.	Indiana	Democrat
Wadsworth, Wm. H.	Kentucky	Republican
Webster, Edwin H.	Maryland	Unionist
Wickliffe, Charles A.	Kentucky	Union Whig

HOUSE VOTES ON JOINT RESOLUTION (H. R. No. 48)

HOUSE VOTE

Representative	State	Party Affiliation
Ancona, Sydenham E.	Pennsylvania	Democrat
Bailey, Joseph	Pennsylvania	Democrat
Biddle, Charles J.	Pennsylvania	Democrat
Corning, Erastus	New York	Democrat
Cox, Samuel S.	Ohio	Democrat
Cravens, James A.	Indiana	Democrat
Crisfield, John W.	Maryland	Unionist
Crittenden, John J.	Kentucky	Unionist
Dunlap, George W.	Kentucky	Unionist
English, James E.	Connecticut	Democrat
Harding, Aaron	Kentucky	Unionist
Johnson, Philip	Pennsylvania	Republican
Knapp, Anthony L.	Illinois	Democrat
Law, John	Indiana	Democrat
Leary, Cornelius L. L.	Maryland	Unionist
Noble, Warren P.	Ohio	Democrat
Norton, Elijah H.	Missouri	Democrat
Pendleton, George H.	Ohio	Democrat
Perry, Nehemiah	New Jersey	Democrat
Richardson, Wm. A.	Illinois	Democrat
Robinson, James C.	Illinois	Democrat
Shiel, George K.	Oregon	Democrat
Steele, John B.	New York	Democrat
Thomas, Francis	Maryland	Union Republican
Voorhees, Daniel W.	Indiana	Democrat
Wadsworth, Wm. Henry	Kentucky	Republican
Ward, Elijah	New York	Democrat
White, Chilton A.	Ohio	Democrat
Wickliffe, Charles A.	Kentucky	Union Whig
Wood, Benjamin	New York	Democrat
Woodruff, George C.	Connecticut	Democrat

VOTES ON CONFISCATION BILL (H. R. 471)

HOUSE

Representative	State	Party Affiliation
Allen, Wm.	Ohio	Democrat
Allen, Wm. J.	Illinois	Democrat
Ancona, Sydenham E.	Pennsylvania	Democrat
Bailey, Joseph	Pennsylvania	Democrat
Biddle, Charles J.	Pennsylvania	Democrat

VOTES ON CONFISCATION BILL (H. R. 471)

HOUSE VOTE (Continued)

Representative	State	Party Affiliation
Browne, George H.	Rhode Island	Union Democrat
Clements, Andrew J.	Tennessee	Unionist
Cobb, George T.	New Jersey	Democrat
Cox, Samuel S.	Ohio	Democrat
Crisfield, John W.	Maryland	Unionist
Crittenden, John J.	Kentucky	Unionist
Dunlap, George W.	Kentucky	Unionist
Fouke, Philip B.	Illinois	Democrat
Granger, Bradley F.	Michigan	Republican
Grider, Henry	Kentucky	Whig
Haight, Edward	New York	Democrat
Hall, Wm. A.	Missouri	Democrat
Harding, Aaron	Kentucky	Unionist
Holman, Wm. S.	Indiana	Democrat
Kerrigan, James E.	New York	Democrat
Knapp, Anthony L.	Illinois	Democrat
Law, John	Indiana	Democrat
Lazear, Jesse	Pennsylvania	Democrat
Lehman, Wm. E.	Pennsylvania	Democrat
Mallory, Robert	Kentucky	Union Democrat
Menzies, John W.	Kentucky	Unionist
Morris, James R.	Ohio	Democrat
Nugen, Robert H.	Ohio	Democrat
Odell, Moses F.	New York	Democrat
Pendleton, George H.	Ohio	Democrat
Rollins, James S.	Missouri	Conservative
Segar, Joseph E.	Virginia	Unionist
Shiel, George K.	Oregon	Democrat
Steele, John B.	New York	Democrat
Steele, Wm. S.	New Jersey	Democrat
Stiles, John D.	Pennsylvania	Democrat
Thomas, Benjamin F.	Massachusetts	Conservative Unionist
Thomas, Francis	Maryland	Union Republican
Ward, Elijah	New York	Democrat
Webster, Edwin H.	Maryland	Unionist
Wickliffe, Charles A.	Kentucky	Union Whig
Wood, Benjamin	New York	Democrat

VOTES ON ABOLISHING SLAVERY IN DISTRICT OF COLUMBIA

HOUSE VOTE

Representative	State	Party Affiliation
Allen, Wm.	Ohio	Democrat
Bailey, Joseph	Pennsylvania	Democrat
Biddle, Charles J.	Pennsylvania	Democrat
Blair, Jacob B.	Virginia	Unionist
Brown, Wm. G.	Virginia	Unionist
Casey, Samuel L.	Kentucky	Republican
Crittenden John J.	Kentucky	Unionist
Delaplaine, Isaac C.	New York	Fusionist
Dunlap, George W.	Kentucky	Unionist
Grider, Henry	Kentucky	Whig
Hall, Wm. A.	Missouri	Democrat
Harding, Aaron	Kentucky	Unionist
Holman, Wm. S	Indiana	Democrat
Johnson, Philip	Pennsylvania	Republican
Knapp, Anthony L.	Illinois	Democrat
Law, John	Indiana	Democrat
Lazear, Jesse	Pennsylvania	Democrat
Mallory, Robert	Kentucky	Union Democrat
Menzies, John W.	Kentucky	Unionist
Morris, James R.	Ohio	Democrat
Noble, Warren P.	Ohio	Democrat
Norton, Elijah H.	Missouri	Democrat
Nugen, Robert H.	Ohio	Democrat
Pendleton, George H.	Ohio	Democrat
Perry, Nehemiah	New Jersey	Democrat
Price Thomas L.	Missouri	Democrat
Rollins, James S.	Missouri	Conservative
Shiel, George K.	Oregon	Democrat
Steele, John B.	New York	Democrat
Steele, Wm. G.	New Jersey	Democrat
Thomas, Francis	Maryland	Union Republican
Vallandigham, Clement L.	Ohio	Democrat
Voorhees, Daniel W.	Indiana	Democrat
Wadsworth, Wm. Henry	Kentucky	Republican
Ward, Elijah	New York	Democrat
White, Chilton A.	Ohio	Democrat
Wickliffe, Charles A.	Kentucky	Union Whig
Wright, Hendrick B.	Pennsylvania	Democrat

HABEAS CORPUS ACT

HOUSE VOTE

Representative	State	Party Affiliation
Allen, Wm.	Ohio	Democrat
Allen, Wm. J.	Illinois	Democrat
Ancona, Sydenham E.	Pennsylvania	Democrat
Biddle, Charles J.	Pennsylvania	Democrat
Calvert, Charles B.	Maryland	Union Whig
Cravens, James A.	Indiana	Democrat
Crisfield, John W.	Maryland	Unionist
Delaplaine, Isaac C.	New York	Fusionist
Dunlap, George W.	Kentucky	Unionist
English James E.	Connecticut	Democrat
Granger, Bradley F.	Michigan	Republican
Grider, Henry	Kentucky	Whig
Hall, Wm. A.	Missouri	Democrat
Hardin, Aaron	Kentucky	Unionist
Holman, Wm. S.	Indiana	Democrat
Johnson, Philip	Pennsylvania	Republican
Kerrigan, James E.	New York	Democrat
Knapp, Anthony L.	Illinois	Democrat
Law, John	Indiana	Democrat
Mallory, Robert	Kentucky	Union Democrat
Menzies, John W.	Kentucky	Unionist
Morris, James R.	Ohio	Democrat
Noble, Warren P.	Ohio	Democrat
Norton, Elijah H.	Missouri	Democrat
Nugen, Robert H.	Ohio	Democrat
Pendleton, George H.	Ohio	Democrat
Perry, Nehemiah	New Jersey	Democrat
Price, Thomas L.	Missouri	Democrat
Robinson, James C.	Illinois	Democrat
Shiel, George K.	Oregon	Democrat
Smith, E. H.	New York	Democrat
Steele, John B.	New York	Democrat
Steele, Wm. G.	New Jersey	Democrat
Stiles, John D.	Pennsylvania	Democrat
Thomas, Benjamin F.	Massachusetts	Conservative Unionist
Vallandigham, Clement L.	Ohio	Democrat
Voorhees, Daniel W.	Indiana	Democrat
Wadsworth, Wm. H.	Kentucky	Republican
Ward, Elijah	New York	Democrat
White, Chilton A.	Ohio	Democrat
Wickliffe, Charles A.	Kentucky	Union Whig
Wood, Benjamin	New York	Democrat
Woodruff, George C.	Connecticut	Democrat
Yeaman, George H.	Kentucky	Unionist

BILL FOR EMANCIPATION IN MISSOURI

HOUSE VOTE

Representative	State	Party Affiliation
Allen, Wm.	Ohio	Democrat
Bailey, Joseph	Pennsylvania	Democrat
Biddle, Charles J.	Pennsylvania	Democrat
Calvert, Charles B.	Maryland	Union Whig
Clements, Andrew J.	Tennessee	Unionist
Corning, Erastus	New York	Democrat
Cox, Samuel S.	Ohio	Democrat
Cravens, James A	Indiana	Democrat
Crittenden, John J.	Kentucky	Unionist
Davis, Wm. Morris	Pennsylvania	Republican
Dunlap, George W.	Kentucky	Unionist
Dunn, Wm McKee	Indiana	Republican
Granger Bradley F.	Michigan	Republican
Grider, Henry	Kentucky	Whig
Haight, Edward	New York	Democrat
Hall, Wm. A.	Missouri	Democrat
Harding, Aaron	Kentucky	Unionist
Holman, Wm. S.	Indiana	Democrat
Johnson, Philip	Pennsylvania	Republican
Kellogg, Wm.	Ohio	Republican
Kerrigan, James E.	New York	Democrat
Knapp, Anthony L.	Illinois	Democrat
Law, John	Indiana	Democrat
Menzies, John W.	Kentucky	Unionist
Morris, James R.	Ohio	Democrat
Norton, Elijah H.	Missouri	Democrat
Odell, Moses F.	New York	Democrat
Pendleton, George H.	Ohio	Democrat
Perry, Nehemiah	New Jersey	Democrat
Porter, Albert G.	Indiana	Republican
Price, Thomas L.	Missouri	Democrat
Shiel, George K.	Oregon	Democrat
Smith, E. H.	New York	Democrat
Steele, John B.	New York	Democrat
Steele, Wm. G.	New Jersey	Democrat
Stiles, John D.	Pennsylvania	Democrat
Stratton, John L. N.	New Jersey	Republican
Trimble, Carey A.	Ohio	Republican
Vallandigham, Clement L.	Ohio	Democrat
Voorhees, Daniel W.	Indiana	Democrat
Ward, Elijah	New York	Democrat
Webster, Edwin H.	Maryland	Unionist
Wickliffe, Charles A.	Kentucky	Union Whig
Wilson, James F.	Iowa	Republican
Wood, Benjamin	New York	Democrat
Woodruff, George C.	Connecticut	Democrat

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